

PROJECT AGREEMENT

TO DESIGN, BUILD AND FINANCE
CONFEDERATION LINE EXTENSION

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SCHEDULES

Schedule No.	Description
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Schedule 2	- Completion Documents
Schedule 3	- Subcontractor's Direct Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Construction Contractor's Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Letters of Credit
Schedule 8	- DB Co Parties
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Integrated Management System Requirements
Schedule 12	- Works Scheduling Requirements
Schedule 13	- DB Co Proposal Extracts
Schedule 14	- Testing & Commissioning
Schedule 15	- Output Specifications
Schedule 16	- Encumbrances
Schedule 17	- Environmental Obligations
Schedule 18	- Communication and Stakeholder Engagement Obligations
Schedule 19	- Procurement Monitoring and Implementation Plan
Schedule 20	- Lands
Schedule 21	- Construction Period Payments
Schedule 22	- Variation Procedure
Schedule 23	- Compensation on Termination
Schedule 24	- Intellectual Property
Schedule 25	- Insurance and Performance Security Requirements
Schedule 26	- Record Provisions
Schedule 27	- Dispute Resolution Procedure
Schedule 28	- Refinancing
Schedule 29	- Form of Performance Guarantee of Construction Guarantor
Schedule 30	- Insurance Trust Agreement
Schedule 31	- DB Co Information
Schedule 32	- [REDACTED]
Schedule 33	- Works Report Requirements
Schedule 34	- Mobility Matters
Schedule 35	- Permits, Licenses, Approvals and Agreements
Schedule 36	- Interface Agreement
Schedule 37	- Extension and Additional Phases
Schedule 38	- Utility Baseline Report

THIS PROJECT AGREEMENT is made as of the [•] day of [•], 20[•]

BETWEEN:

THE CITY OF OTTAWA

(the “City”)

AND:

EAST WEST CONNECTORS GP, [REDACTED]

(“DB Co”)

WHEREAS:

- A. A new light rail transit system is currently under construction in Ottawa, Ontario, being an approximately 12.5 kilometer line along the City’s Bus Rapid Transit corridor from Blair station in the east to Tunney’s Pasture station in the west (the “**Existing Confederation Line**”), which is scheduled to be completed in 2018.
- B. Pursuant to the City’s 2013 Transportation Master Plan, the City wishes to procure the design, construction, installation, testing, commissioning and completion of extensions to the Existing Confederation Line, including (i) extensions west from the Tunney’s Pasture station to the Baseline and Moodie stations (the “**Confederation Line West Extension**”), and (ii) an extension east from the Blair station to the Trim station (the “**Confederation Line East Extension**”), together with certain other Works in relation thereto as described herein (collectively, the “**Project**”).
- C. DB Co will carry out and perform all Works necessary to complete the Project.
- D. The City and DB Co wish to enter into this project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which DB Co shall perform the Works and complete the Project.
- E. The construction and completion of the Project will provide an overall improvement to the quality of life of the citizens of Ottawa and its outlying regions as well as to visitors to the City.
- F. Public ownership and control of the Existing Confederation Line and the Project will be preserved.
- G. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that the City and DB Co work collaboratively, responsibly and cooperatively throughout the Project Term.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) This Project Agreement shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement:

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Subcontractor's Direct Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Construction Contractor's Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Letters of Credit
Schedule 8	- DB Co Parties
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Integrated Management System Requirements
Schedule 12	- Works Scheduling Requirements
Schedule 13	- DB Co Proposal Extracts
Schedule 14	- Testing & Commissioning
Schedule 15	- Output Specifications
Schedule 16	- Encumbrances
Schedule 17	- Environmental Obligations
Schedule 18	- Communication and Stakeholder Engagement Obligations
Schedule 19	- Procurement Monitoring and Implementation Plan
Schedule 20	- Lands
Schedule 21	- Construction Period Payments
Schedule 22	- Variation Procedure
Schedule 23	- Compensation on Termination
Schedule 24	- Intellectual Property
Schedule 25	- Insurance and Performance Security Requirements
Schedule 26	- Record Provisions
Schedule 27	- Dispute Resolution Procedure
Schedule 28	- Refinancing
Schedule 29	- Form of Performance Guarantee of Construction Guarantor
Schedule 30	- Insurance Trust Agreement
Schedule 31	- DB Co Information
Schedule 32	- [REDACTED]
Schedule 33	- Works Report Requirements
Schedule 34	- Mobility Matters
Schedule 35	- Permits, Licenses, Approvals and Agreements
Schedule 36	- Interface Agreement
Schedule 37	- Extension and Additional Phases
Schedule 38	- Utility Baseline Report

- (c) The documents comprising this Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for those parts of DB Co's proposal which are incorporated by explicit reference into this Project Agreement by the DB Co Proposal Extracts, on Financial Close the Request for Proposals and DB Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by DB Co, the City or anyone else (including anyone pursuant to Schedule 27 – Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Works, any obligations or liabilities of DB Co, or anything else contained in this Project Agreement.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of the City, no consent, approval or satisfaction of the City or the City Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of DB Co, no consent, approval or satisfaction of DB Co or the DB Co Representative shall be unreasonably withheld or delayed.
- (g) The organization of the Output Specifications into divisions, sections and parts shall not control DB Co in dividing the Works among the DB Co Parties or in establishing the extent of the Works to be performed by a trade.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
 - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) the body of this Project Agreement;
 - (iv) Schedule 1 – Definitions and Interpretation;
 - (v) Schedule 35 – Permits, Licences, Approvals and Agreements;
 - (vi) Schedule 20 – Lands;
 - (vii) Schedule 27 – Dispute Resolution Procedure;
 - (viii) Schedule 21 – Construction Period Payments;

- (ix) Schedule 15 – Output Specifications;
 - (x) Schedule 17 – Environmental Obligations;
 - (xi) Schedule 25 – Insurance and Performance Security Requirements;
 - (xii) Schedule 22 – Variation Procedure;
 - (xiii) Schedule 10 – Review Procedure;
 - (xiv) Schedule 14 – Testing & Commissioning;
 - (xv) Schedule 11 – Integrated Management System Requirements;
 - (xvi) Schedule 28 – Refinancing;
 - (xvii) Schedule 23 – Compensation on Termination;
 - (xviii) Schedule 26 – Record Provisions;
 - (xix) the other Schedules in the order in which they are listed in Section 1.1(b);
 - (xx) Schedule 13 – DB Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Works, the provision that applies to the specific part of the Works shall govern for that specific part of the Works.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then DB Co or the City, upon discovery of same, shall immediately give Notice to the City Representative. The City Representative shall, within 10 Business Days after such Notice, make a determination of which provision governs and give Notice of such determination, in writing, to DB Co.
- (d) The City and DB Co shall comply with the determination of the City Representative pursuant to this Section 1.2 unless DB Co disputes the decision of the City Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

1.3 Conflict of Documents

- (a) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Lenders' Direct Agreement, the provisions of the Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency. Notwithstanding the foregoing, if there is any right or remedy in favour of the City set out in the Lenders' Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency.

1.4 Legal Requirements

- (a) Whenever standards of Applicable Law differ, the most stringent standards shall govern.

1.5 Interface Agreement and Interface with RTG

- (a) On the execution and delivery of this Project Agreement, the parties shall, and the City shall cause RTG to, execute and deliver the Interface Agreement, provided that the Interface Agreement shall be held in escrow until released by notice delivered by the City to DB Co.
- (b) DB Co hereby agrees as follows:
- (i) without prejudice to DB Co's right to claim Delay Events and Compensation Events hereunder from the City, including pursuant to Sections 18.5 and 18.7 relating to defects, errors or inaccuracies in the Stage 1 Connection Infrastructure and Stage 1 Systems Infrastructure, neither RTG nor any RTG Party shall be liable to DB Co or any DB Co Party for, and DB Co shall not and shall ensure that no DB Co Party shall seek to recover from RTG or any RTG Party, any damages, losses, costs, liabilities or expenses which may arise or be suffered, sustained or incurred by, or brought against, any of them (whether in contract, tort, for breach of statutory duty or otherwise) arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of the PS Services or the PS Services Variation by RTG, or the performance or any breach of the RTG Interface and Design Management Works or the variation to the Stage 1 Project Agreement governing the RTG Interface and Design Management Works by RTG, or any act or omission of RTG or any RTG Party in connection therewith;
 - (ii) RTG's obligations and liability to DB Co are limited to those obligations and liabilities of RTG arising under the Interface Agreement, and nothing herein shall be applied or construed so as to modify or limit such obligations and liabilities, or impose additional obligations or liabilities on RTG or any RTG Party;
 - (iii) the rights of DB Co against the City in relation to the agreements, terms, conditions, scope of Works, standards or other obligations to be performed by DB Co under this Project Agreement shall not be limited by anything in the Interface Agreement; and
 - (iv) in the event that any amount is agreed or determined to be due and payable by DB Co to RTG under the Interface Agreement and RTG has exhausted any rights against DB Co under the Interface Agreement, then the City shall be entitled to recover such amount in the same way as any other liability owing from DB Co to the City hereunder, including by way of set-off or through any performance security provided under this Project Agreement, but subject to the same restrictions or limitations set out hereunder, under the Interface Agreement, or in such performance security as if the underlying obligations had formed part of this Project Agreement. Notwithstanding the foregoing, in no event shall a failure to make payment under the Interface Agreement or any other breach by DB Co thereunder constitute a DB Co Event of Default under this Project Agreement or give rise to any right in favour of the City against DB Co under this Project Agreement, at law or in equity other than the set off right or right to draw on performance security as referred to above. The City shall, and shall procure that RTG shall, comply with the prohibition on duplication of claims under Section 1.4(b) of the Interface Agreement. For greater

certainty, any amounts settled by DB Co with RTG whether through cash payment or otherwise with respect to any obligation under the Interface Agreement shall reduce the City's right to recover such amount on behalf of RTG on a dollar-for-dollar basis. DB Co shall be entitled to settle any obligation under the Interface Agreement directly with RTG without any regard for any agreements, liabilities, obligations or any equities which may otherwise exist between RTG and the City. In the event of a dispute in respect of such amounts, such dispute shall be settled in accordance with the dispute resolution procedure under the Interface Agreement.

(c) DB Co acknowledges and agrees that:

- (i) the City has delegated certain responsibilities to RTG in respect of the construction and maintenance of the Existing Confederation Line and the maintenance of the Confederation Line East Extension and the Confederation Line West Extension under the Stage 1 Project Agreement. Accordingly, and notwithstanding any direct rights of recourse that RTG may have against DB Co under the Interface Agreement, the City shall be entitled, upon the release of the Interface Agreement from escrow as contemplated in Section 1.5(a), to enforce any term of this Project Agreement against DB Co on behalf of RTG or any RTG Party (or any other party to whom the City has delegated any such functions), provided that, for the avoidance of doubt, DB Co shall owe no greater obligations to the City in this regard than if the delegated responsibilities had been performed by the City in its own name;
- (ii) DB Co's liability to the City under this Project Agreement shall not be affected by the existence of any arrangements between the City and RTG whereby the City's liability to RTG is limited to the liability which the City can establish against DB Co.

1.6 Early Works Agreement

- (a) Upon achievement of Financial Close, this Project Agreement shall supersede and replace the early works agreement in respect of the Project executed by the Parties on or about March 15, 2019 (the "**Early Works Agreement**"). Without prejudice to the generality of the foregoing, any part of the Works performed by DB Co under and in accordance with the Early Works Agreement shall be treated as having been performed under and in accordance with this Project Agreement, and the City's payment obligations related to that part of the Early Works will be those under this Project Agreement and not under this Early Works Agreement, and shall be accounted for and paid for as part of the Mobilization Credit in accordance with Schedule 21 – Construction Period Payments of the Project Agreement.

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1.1, 1.2, 1.3, 1.4, 2.1, 2.2, 2.3, 2.4, 3.1, 4.11 to 4.17, 5 to 15, 16.5, 17 to 22, 26 to 31, and 41 to 53 and Schedules 1, 2, 7 – 13, 16 – 18, 20 – 22, 24 – 27, 32 and 35 of this Project Agreement will come into effect on the date of this Project Agreement ("**Commercial Close**"). All other provisions and schedules will come into effect only on Financial Close.

2.2 Standby Letter of Credit

- (a) If DB Co has provided the City with multiple standby letters of credit in accordance with Section 9.1(2) of the RFP, for purposes of this Section 2.2 each of the multiple irrevocable standby letters of credit is referred to as a Standby Letter of Credit for purposes of this Project Agreement.
- (b) Unless a Standby Letter of Credit is drawn by the City in accordance with the provisions of this Project Agreement, the City shall release and deliver the Standby Letter(s) of Credit to DB Co on Financial Close.
- (c) DB Co shall ensure that the Standby Letter(s) of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.
- (d) If there are multiple Standby Letters of Credit, DB Co acknowledges and agrees that:
 - (i) the City may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount;
 - (ii) the City may draw on any Standby Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Provider's contribution to security;
 - (iii) the City may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a DB Co Party; and
 - (iv) the provision of multiple Standby Letters of Credit shall not in any way prejudice or adversely affect the rights of the City to draw on the Standby Letter(s) of Credit in accordance with this Project Agreement, including in a circumstance where the default giving rise to the City's right to draw on the Standby Letter(s) of Credit is not the result of any act or omission of the Letter of Credit Provider(s) whose Standby Letter of Credit is drawn upon.

2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, DB Co will deliver to the City drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the Financial Close Target Date:
 - (i) DB Co shall deliver to the City the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
 - (ii) the City shall deliver to DB Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If DB Co fails to deliver to the City any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a

breach by the City of its obligations under Section 2.3(b)(ii)) and the City does not waive such requirement, the City will be entitled to:

- (i) draw on the Standby Letter of Credit immediately and to retain the lesser of (A) the full amount of the Standby Letter of Credit, and (B) the difference between the Guaranteed Price and the price that Contracting Authority is able to obtain from another contractor for the Works, together with all costs reasonably incurred by Contracting Authority to enter into binding agreements with such other contractor, and such amount shall be retained as liquidated damages; and
- (ii) terminate this Project Agreement in its entirety by written Notice having immediate effect.

The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by the City as a result of DB Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not the City incurs or mitigates its damages, and that the City shall not have any obligation to mitigate any such damages.

- (d) If the City fails to deliver to DB Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by DB Co of its obligations under Section 2.3(b)(i)) and DB Co does not waive such requirement, DB Co will be entitled to the return of the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written Notice having immediate effect.
- (e) The following documents will be delivered by DB Co to the City no later than forty-five (45) days following the earliest date such documents are available from the Workplace Safety and Insurance Board: in respect of the Construction Contractor, a CAD-7 and a Workplace Injury Summary Report.

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to DB Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, the City may in its sole discretion either:
 - (i) terminate this Project Agreement in its entirety by written Notice having immediate effect; or
 - (ii) direct DB Co to assign to a designee of the City which has agreed to assume:
 - (A) the Project Agreement, and all of DB Co's right, title and interest in the Project Data, the Intellectual Property Rights and the DB Co Permits, Licences, Approvals and Agreements; and

- (B) those contracts between DB Co and any DB Co Party which the City elects to be assigned.
- (c) If the City exercises its rights pursuant to Section 2.4(b), and, provided DB Co has, if directed, delivered the assignments provided for in Section 2.4(b)(ii)(A) and (B) above, DB Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals plus **[REDACTED]**% of such fee. The City's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the City, that such fee represents full and final satisfaction of any obligation or liability of the City and any other Government Entity to DB Co and any DB Co Parties in connection with the Project Agreement and the Request for Proposals process.

3. GUARANTEED PRICE

3.1 Guaranteed Price and Adjustments

- (a) The Guaranteed Price, exclusive of HST, is **[\$REDACTED]**, and is equal to the sum of the Cost of the Works and the Cost of the Financing. The Cost of the Works and the expected Cost of the Financing as of the date hereof are as set out in the Financial Model.
- (b) DB Co represents and warrants that the Project Debt Interest Cost is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted once on, or within the 2 Business Days immediately prior to, Financial Close on the basis of the actual increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward in the Interest Reference Rate as compared to the Interest Reference Rate as at the RFP Financial Submission Deadline.
- (c) The Parties:
 - (i) acknowledge that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 3.1(b) as at the date set out in Section 3.1(b); and
 - (ii) acknowledge and agree that subject to adjustments made in accordance with the provisions of this Project Agreement, the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and the final adjusted Cost of the Works as of the date set out in Section 3.1(b).
- (d) Subject to the provisions of Section 3.1(c) and without prejudice to express provisions in this Project Agreement requiring, or entitling DB Co to, an adjustment to monetary compensation, the Parties agree that the Guaranteed Price will not be subject to adjustment despite changes in the Works, unless such changes in the Works arise pursuant to a Variation Confirmation. The Parties further agree that the Guaranteed Price will only be adjusted where the Project Agreement specifically and expressly refers to an adjustment to the Guaranteed Price, and no claim for an adjustment to the Guaranteed Price on any legal or equitable basis outside of the specific and express rights to an adjustment of the Guaranteed Price set out in the Project Agreement will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Variation Confirmation under Schedule 22 – Variation Procedure, but without

prejudice to express provisions in this Project Agreement requiring or entitling DB Co to an adjustment to monetary compensation.

- (e) DB Co acknowledges and agrees that, subject to the provisions of Section 3.1(c) and without prejudice to express provisions in this Project Agreement requiring, or entitling DB Co to, an adjustment to monetary compensation,
 - (i) DB Co has satisfied itself as to the correctness and sufficiency of the Guaranteed Price, and has based the Guaranteed Price on the data, interpretations, necessary information, examinations and satisfaction as to all relevant matters and any further data relevant to the design;
 - (ii) the Guaranteed Price covers all of DB Co's obligations under the Project Agreement; and
 - (iii) the Guaranteed Price includes all premium time and overtime that may be required to perform the Works in accordance with this Project Agreement and Good Industry Practice.

4. PAYMENT

4.1 General

- (a) Subject to the provisions of the Project Agreement (including, for clarity Section 3.1(d)) and in accordance with and subject to Applicable Law respecting holdbacks, the City shall make the payments set out in this Section 4.
- (b) For the purpose of this Project Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.

4.2 Construction Period Payments

- (a) The City shall pay to DB Co the Construction Period Payments, plus, for clarity, applicable HST in accordance with Schedule 21 – Construction Period Payments and this Project Agreement.
- (b) The City shall pay to DB Co:
 - (i) the East Substantial Completion Payment, plus, for clarity, applicable HST, on the East Substantial Completion Payment Date; and
 - (ii) the West Substantial Completion Payment together with any Unpaid Construction Period Payments as of the West Substantial Completion Payment Date, plus, for clarity, applicable HST, on the West Substantial Completion Payment Date,

each in accordance with Schedule 21 – Construction Period Payments and this Project Agreement.

- (c) Notwithstanding Section 4.2(b),

- (i) if the East Warranty Letter of Credit has not been delivered to the City by the East Substantial Completion Payment Date, the City may withhold from the East Substantial Completion Payment a holdback amount of **[\$[REDACTED]]** (the “**East Warranty Cash Amount**”); and
 - (ii) if the West Warranty Letter of Credit has not been delivered to the City by the West Substantial Completion Payment Date, the City may withhold from the West Substantial Completion Payment a holdback amount of **[\$[REDACTED]]** (the “**West Warranty Cash Amount**”).
- (d) In the event of Section 4.2(c)(i) above, the East Warranty Cash Amount may be withheld by the City, subject to reduction in value in accordance with Section 11.18(a), until the earlier of (i) the date that is two Business Days following the date that the East Warranty Letter of Credit has been delivered to the City, or (ii) the date that is two Business Days following the expiry of the East Warranty Period, and, in either case, the East Warranty Cash Amount shall be paid by the City to DB Co upon such second Business Day, less any amounts as would otherwise have been drawn down against the East Warranty Letter of Credit in accordance with Sections 11.17 and 11.17A. Until receipt of the East Warranty Letter of Credit, the City may use the East Warranty Cash Amount in the place of, in the same manner as and for the same purpose as the East Warranty Letter of Credit. The withholding of the East Warranty Cash Amount in accordance with this Section 4.2(d) until DB Co’s delivery of the East Warranty Letter of Credit to the City shall be the City’s sole remedy for failure on the part of DB Co to deliver the East Warranty Letter of Credit by the East Substantial Completion Payment Date and, for greater certainty, the City shall not be entitled to withhold payment of the balance of the East Substantial Completion Payment as a result of any such failure on the part of DB Co.
- (e) In the event of Section 4.2(c)(ii) above, the West Warranty Cash Amount may be withheld by the City, subject to reduction in value in accordance with Section 11.18(a), until the earlier of (i) the date that is two Business Days following the date that the West Warranty Letter of Credit has been delivered to the City, or (ii) the date that is two Business Days following the expiry of the West Warranty Period, and, in either case, the West Warranty Cash Amount shall be paid by the City to DB Co upon such second Business Day, less any amounts as would otherwise have been drawn down against the West Warranty Letter of Credit in accordance with Sections 11.17 and 11.17A. Until receipt of the West Warranty Letter of Credit, the City may use the West Warranty Cash Amount in the place of, in the same manner as and for the same purpose as the West Warranty Letter of Credit. The withholding of the West Warranty Cash Amount in accordance with this Section 4.2(e) until DB Co’s delivery of the West Warranty Letter of Credit to the City shall be the City’s sole remedy for failure on the part of DB Co to deliver the West Warranty Letter of Credit by the West Substantial Completion Payment Date and, for greater certainty, the City shall not be entitled to withhold payment of the balance of the West Substantial Completion Payment as a result of any such failure on the part of DB Co.
- (f) [Not used]
- (g) Notwithstanding Section 4.2(b), if the Remaining Works Letter of Credit has not been delivered to the City by the West Substantial Completion Payment Date, the City may withhold from the West Substantial Completion Payment a holdback amount of **[\$[REDACTED]]** (the “**Remaining Works Cash Amount**”);

- (h) In the event of Section 4.2(g) above, the Remaining Works Cash Amount may be withheld by the City until the earlier of (i) the date that is two Business Days following the date that the Remaining Works Letter of Credit has been delivered to the City, or (ii) the date when the Remaining Works Letter of Credit would have been returned to DB Co if it had been provided in accordance with Section 11.18A, and, in either case, upon such date, the Remaining Works Cash Amount shall be paid by the City to DB Co, less any amounts as would otherwise have been drawn down against the Remaining Works Letter of Credit in accordance with Section 11.18A. Until receipt of the Remaining Works Letter of Credit, the City may use the Remaining Works Cash Amount in the place of, in the same manner as and for the same purpose as the Remaining Works Letter of Credit. The withholding of the Remaining Works Cash Amount in accordance with this Section 4.2(h) until DB Co's delivery of the Remaining Works Letter of Credit to the City shall be the City's sole remedy for failure on the part of DB Co to deliver the Remaining Works Letter of Credit by the West Substantial Completion Payment Date and, for greater certainty, the City shall not be entitled to withhold payment of the balance of the West Substantial Completion Payment as a result of any such failure on the part of DB Co.

4.3 [Not Used]

4.4 [Not Used]

4.5 Compensation on Termination

- (a) If this Project Agreement is terminated pursuant to Sections 36.3(a), 37.2(a)(ii), 38.1, 38.2 or 38.3, then:
- (i) Schedule 23 – Compensation on Termination shall apply and the City shall pay DB Co any applicable compensation on termination; and
 - (ii) the provisions of Section 4.2 shall no longer apply.
- (b) DB Co hereby irrevocably directs the City to make any Compensation Payment to the Lenders' Agent, or as the Lenders' Agent may direct. The City shall pay the Compensation Payment as directed by the Lenders' Agent and shall not accept any redirection without the consent of Lenders' Agent. The City will pay the Compensation Payment in accordance with the provisions of Schedule 23 – Compensation on Termination. DB Co acknowledges and agrees that payment by the City of the Compensation Payment to the Lenders' Agent in accordance with this Section 4.5(b) constitutes payment by the City to DB Co in satisfaction of the City's obligation to pay the Compensation Payment to DB Co under this Project Agreement and in satisfaction of any trust obligation of the City with respect to such payments under section 7 of the CA pursuant to section 10 of the CA.

4.6 Payment Due under Insurance Policies

- (a) In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made in accordance with the provisions of the Insurance Trust Agreement.

4.7 HST

- (a) The City covenants and agrees to pay to DB Co the HST that may be exigible with respect to any payments made by the City to DB Co hereunder.

4.8 Set-Off

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
 - (i) the City, to set off against any amounts otherwise due to DB Co pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 46, or any amounts payable as liquidated damages) that are due and owed to the City from or by DB Co pursuant to the terms of this Project Agreement; and
 - (ii) DB Co to set off against any amounts otherwise due to the City pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 46) that are due and owed to DB Co from or by the City pursuant to the terms of this Project Agreement.
- (b) For clarity, the City is entitled to exercise its rights in accordance with Section 4.8(a)(i) immediately upon an amount becoming due and owed to the City by DB Co pursuant to the terms of this Project Agreement.

4.9 Effect of Payment

- (a) Subject to Section 40.2, no payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by DB Co of any of its obligations under this Project Agreement, nor shall it operate to relieve DB Co from the performance of any of its obligations under this Project Agreement which have not been performed.

4.10 No Other Entitlement

- (a) DB Co shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Project Agreement, except as specifically and expressly set out in this Project Agreement.

4.11 Taxes

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law. For clarity, the City shall not be required to pay any interest and/or penalties that are imposed on or assessed against DB Co or any DB Co Party for non-compliance with Applicable Law. If DB Co is required by Applicable Law to collect any such HST from the City, the City shall pay such HST to DB Co simultaneously with the amount to which such applicable HST relates or applies.
- (b) The City shall pay when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Lands, the New City Infrastructure, the Existing Infrastructure and the New MTO Infrastructure.

- (c) The City shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by the City upon and in connection with payments by the City to DB Co under this Project Agreement.

4.12 Changes in Scope of Taxation

- (a) If, as a result of a Change in Law, the application of Taxes under Part IX of the *Excise Tax Act* (Canada) or any provincial sales tax legislation changes with respect to the provision of any goods or services by DB Co in connection with the performance of the Works, the City and DB Co agree to co-operate to determine how such change affects their respective obligations under this Project Agreement to the extent not already addressed in this Project Agreement.

4.13 Changes in Recoverability of Tax Credits

- (a) The City will pay to DB Co from time to time, as the same is incurred by DB Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. DB Co will pay to the City from time to time, as the same is incurred by DB Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 4.13, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by DB Co in respect of the supply of any good or service to the City which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by DB Co in the course of carrying out the Works to the extent that DB Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.
- (c) For the purposes of this Section 4.13, the term “**Recoverable Tax**” means HST incurred by DB Co in respect of the supply of any good or service to the City which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by DB Co in the course of carrying out the Works to the extent that DB Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

4.14 Information and Assistance Provided by DB Co

- (a) DB Co shall, at the City’s request and cost, assist the City in applying for and obtaining all remissions and credits of Taxes to which the City is entitled.
- (b) The City may apply for a global or general exemption, waiver, remission, or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement. DB Co shall, at the City’s cost, assist the City in making any applications for such global or general exemption, waiver, remission or refund and shall provide the City with such documentation as the City may reasonably require to support such application and, in any event, shall provide such consent as the City may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by the City through such application shall accrue to the sole benefit of the City.
- (c) DB Co will provide the City with any information reasonably requested by the City from time to time in relation to any Taxes chargeable in accordance with this Project Agreement and payable by the City to DB Co from time to time.

4.15 Residency – Income Tax Act (Canada)

- (a) DB Co shall not undertake any action or transaction that, if undertaken, would cause or result in DB Co becoming a Non-Resident without the City's prior written consent, which consent may be withheld in the City's sole discretion.

4.16 Taxes – General

- (a) DB Co shall not, without the prior written consent of the City (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause the City to have (or result in the City having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to DB Co or any DB Co Party under this Project Agreement or under any other Ancillary Document.

4.17 Taxes – Indemnity

- (a) If (i) DB Co becomes a Non-Resident, or (ii) the City is or becomes required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to DB Co or a DB Co Party by the City under the Project Agreement or under any of the Project Documents, then the City shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to DB Co or a DB Co Party on or after the date on which (A) DB Co or the DB Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or (B) the City is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by the City under this Project Agreement or under any other Ancillary Document to DB Co or a DB Co Party shall be paid or credited net of such deductions or withholdings.
- (b) If (i) DB Co becomes a Non-Resident, or (ii) the City is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to DB Co or a DB Co Party by the City under the Project Agreement or under any of the Project Documents, DB Co shall, in each case, indemnify and hold harmless the City for (A) the full amount of all Taxes ("**Indemnifiable Taxes**") that arise, are imposed on or are required to be paid by the City in respect of any amounts paid or credited by the City to DB Co or any DB Co Party under this Project Agreement or under any other Ancillary Document as a result of either of the foregoing items less any amount withheld or deducted by the City in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted ("**Associated Liabilities**"). Payment under this indemnification shall be made within 30 days after the date the City makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to DB Co by the City shall be conclusive evidence, absent manifest error, of the amount due from DB Co to the City. The City shall be entitled to exercise its rights of set off under Section 4.8 against any amounts owing under this indemnification. In the event that it is finally determined that such Indemnifiable Taxes were not correctly or legally

asserted or remitted, then such Indemnifiable Taxes shall be reimbursed to DB Co following such final determination.

5. SCOPE OF AGREEMENT

5.1 Scope of Agreement

- (a) DB Co shall undertake the Project and perform the Works in accordance with and subject to the provisions of this Project Agreement.
- (b) DB Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to the City, except as otherwise provided in this Project Agreement. Except as provided in the Interface Agreement, DB Co's sole recourse with respect to the subject matter of this Project Agreement shall be to the City.

6. REPRESENTATIONS AND WARRANTIES

6.1 DB Co Representations and Warranties

- (a) DB Co represents and warrants to the City that as of Commercial Close:
 - (i) DB Co is **[REDACTED]** and is formed and validly existing under the laws of the Province of Ontario, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (ii) **[REDACTED]** under the laws of the Province of British Columbia, is in good standing with the Registrar of Companies in the Province of British Columbia with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of DB Co;
 - (iii) **[REDACTED]** under the laws of the Province of Ontario, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of DB Co;
 - (iv) **[REDACTED]** under the laws of the Province of Ontario, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of DB Co;
 - (v) **[REDACTED]** under the laws of the Province of Ontario, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of DB Co;

- (vi) all partnership interests in DB Co as of Commercial Close have been disclosed to the City;
- (vii) DB Co and the DB Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of infrastructure and facilities similar to the those included in the scope of the Project in scale, scope, type and complexity, and have the required ability, experience, skill and capacity to perform the Works in a timely and professional manner as set out in this Project Agreement;
- (viii) DB Co, and **[REDACTED]** have the requisite power, authority and capacity to execute, deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed by DB Co or by **[REDACTED]** in its capacity as a partner of DB Co;
- (ix) no steps or proceedings have been taken or are pending to supersede or amend:
 - (A) the constating or formation documents of DB Co, including the partnership agreement governing DB Co; or
 - (B) the constating or formation documents, articles or by-laws of **[REDACTED]**

in each case, in a manner that would impair or limit its ability to perform the obligations of DB Co under this Project Agreement;

- (x) this Project Agreement has been duly authorized, executed, and delivered by DB Co, and constitutes a legal, valid, and binding obligation of DB Co, **[REDACTED]** enforceable against each of them in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (xi) the execution delivery, and performance by DB Co, and performance by **[REDACTED]** in its capacity as a partner of DB Co, of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating, formation or organizational documents, including any by-laws;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;

- (xii) no DB Co Event of Default has occurred and is continuing;
- (xiii) all of the information regarding DB Co, **[REDACTED]** set out in Schedule 31 – DB Co Information is true and correct in all material respects;
- (xiv) there are no actions, suits, proceedings, or investigations pending or threatened against DB Co, **[REDACTED]** or, to DB Co's knowledge, any DB Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of DB Co or in any impairment of its ability to perform its obligations under this Project Agreement, and DB Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (xv) DB Co has conducted its own documentary investigations and has carefully reviewed the whole of this Project Agreement, and all other documents made available to DB Co by or on behalf of the City, and, to DB Co's knowledge, nothing contained herein or therein inhibits or prevents DB Co from completing the Works or performing the Works in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xvi) DB Co, and **[REDACTED]** in its capacity as a partner of DB Co, is able to meet its obligations as they generally become due;
- (xvii) DB Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is **[REDACTED]**;
- (xviii) [Intentionally Deleted];
- (xix) each Scheduled Substantial Completion Date is a realistic date and is achievable by DB Co performing the Works in accordance with this Project Agreement;
- (xx) DB Co, and **[REDACTED]** is not a Non-Resident;
- (xxi) DB Co has obtained all necessary DB Co Permits, Licences, Approvals and Agreements required to commence the Works;
- (xxii) the manager or supervisory personnel DB Co has assigned to the Project are highly experienced;
- (xxiii) DB Co has a sufficient staff of qualified and competent personnel to replace its designated supervisors, subject to the City's approval, in the event of death, incapacity or resignation;
- (xxiv) DB Co and the Construction Contractor have conducted inspections of the Lands prior to Commercial Close and an investigation and examination of the Project Agreement, the Background Information and any other documents made available to DB Co by the City so as to ascertain the nature or location of the Works and the Lands, the physical conditions of the Lands and the Existing Infrastructure on which Works will be

performed, and protocols, rules and regulations if any, possible delays in commencing the Works, conditions relating to the transportation, handling and storage of materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the Works;

- (xxv) DB Co has secured the Financing and is in a position to complete the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing financing for projects similar to the Project;
- (xxvi) no Restricted Person has Direct or Indirect Power or Control over any member of the DB Co Group in relation to the decisions, management, actions or policies of DB Co or in relation to the operation, management and ownership of the Project;
- (xxvii) to the knowledge of DB Co, no Restricted Person has directly or indirectly, an Economic Interest in DB Co or the Project;
- (xxviii) either:
 - (A) the COR-Certified Construction DB Co Party is in possession of its COR Certification in good standing as required under this Project Agreement and has the ability to maintain such COR Certification at all times during the performance of the Works in accordance with its terms, provisions and conditions; or
 - (B) the COR-Qualified Construction DB Co Party:
 - (I) is in possession of its OHSAS 18001 Accreditation which remains in good standing and has the ability to maintain such OHSAS 18001 Accreditation in good standing at all times during the performance of the Works until such COR-Qualified Construction DB Co Party receives its COR Certification as required under this Project Agreement, and
 - (II) has made an application to the IHSA for its COR Certification as required under this Project Agreement; and
- (xxix) Prior to or concurrently with execution of this Project Agreement, DB Co has executed the Nominated Signalling Subcontract with the Nominated Signalling Subcontractor or has caused the Construction Contractor to execute the Nominated Signalling Subcontract with the Nominated Signalling Subcontractor.

6.2 City Representations and Warranties

- (a) The City represents and warrants to DB Co that as of Commercial Close:
 - (i) the City is a municipal corporation duly and validly constituted and subsisting under the laws of the Province of Ontario and has the requisite power, authority and capacity to execute and deliver this Project Agreement and perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;

- (ii) this Project Agreement has been duly authorized, executed, and delivered by the City and constitutes a legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are in the discretion of a court;
 - (C) the special jurisdiction and power of the Ontario Municipal Board over defaulting municipalities under the *Municipal Affairs Act* (Ontario);
- (iii) the execution, delivery, and performance by the City of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) any Applicable Law (including, for greater certainty, the *City of Ottawa Act 1999* (Ontario) and any by-laws issued in accordance therewith); or
 - (B) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected;
- (iv) the City has obtained all necessary consents and approvals required for the execution by the City of, and performance of its obligations under, this Project Agreement;
- (v) other than any proceeding under the *Expropriations Act* (Ontario) which could delay the acquisition by the City of the Lands, there are, to the knowledge of the City, no actions, suits, proceedings, or investigations pending or threatened (in writing) against the City, MTO or, to the City's knowledge, any City Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which the City or MTO has received written notice, and that individually or in the aggregate could result in any material adverse effect on the Project, or in any impairment of the City's, MTO's or DB Co's ability to perform their respective obligations under this Project Agreement, and the City has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (vi) the City is able to meet its obligations as they generally become due;
- (vii) the City has rights of use and access to, on and over the Lands, or has the requisite power to obtain such rights, that are sufficient to enable the City to grant or to cause to be granted to DB Co the licence rights contemplated in Section 16.1;
- (viii) the Project is permitted by the existing official plan, zoning and other land use restrictions applicable to the City and the Project.

- (b) The City represents and warrants to DB Co that as of Commercial Close, no City Event of Default has occurred and is continuing.

7. BACKGROUND INFORMATION

7.1 No Liability

- (a) Except as expressly provided in Sections 1.5(b)7.4, 18.1(b), 18.2, 18.3, 18.4, 18.5, 18.6, 18.7 and 18.8 none of the City, any City Party, RTG or any RTG Party, or any Government Entity shall be liable to DB Co or any DB Co Party for, and DB Co or any DB Co Party shall not seek to recover from the City, any City Party, RTG or any RTG Party, or any Government Entity, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, DB Co or any DB Co Party.

7.2 No Warranty

- (a) Except as expressly provided in Sections 7.4, 18.1(b), 18.2, 18.3, 18.4, 18.5, 18.6, 18.7 and 18.8:
 - (i) neither the City nor any City Party, nor RTG nor any RTG Party, nor any Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither the City nor any City Party, nor RTG nor any RTG Party, or Government Entity warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of DB Co under this Project Agreement or under any of the Project Documents; and
 - (ii) neither the City nor any City Party, nor RTG nor any RTG Party, nor any Government Entity shall be liable to DB Co or any DB Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
 - (A) to disclose or make available to DB Co or any DB Co Party any information, documents or data;
 - (B) to review or update the Background Information; or
 - (C) to inform DB Co or any DB Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

7.3 No Claims

- (a) DB Co acknowledges and confirms that:
 - (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and

- (ii) except as expressly provided in Sections 7.4, 18.1(b), 18.2, 18.3, 18.4, 18.5, 18.6, 18.7 and 18.8, it shall not be entitled to and shall not, and shall ensure that no DB Co Party shall, make any claim against the City, or any City Party, RTG or any RTG Party, or Government Entity (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:

- (A) of any misunderstanding or misapprehension in respect of the Background Information; or

- (B) that the Background Information was incorrect or insufficient,

nor shall DB Co be relieved from any of its obligations under this Project Agreement on any such ground.

7.4 Technical Reports

- (a) The City agrees that, if at the date of this Project Agreement, except as disclosed in any Background Information (other than Technical Reports) or as otherwise disclosed by the City or any City Party or known by DB Co or any DB Co Party, in each case prior to the date that is 30 days prior to the RFP Technical Submission Deadline, any of the information in:

- (i) the Technical Reports (other than the Geotechnical Reliant Reports) is, to the actual knowledge of the City, incorrect, or there is relevant information in the possession or control of the City that would make any of the information in such Technical Reports incorrect, or

- (ii) the Geotechnical Reliant Reports is incorrect,

then, to the extent that such incorrect information materially adversely interferes with DB Co's ability to perform the Works or materially adversely affects DB Co's cost of, or schedule for, performing the Works, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

8. PROJECT DOCUMENTS

8.1 Project Documents

- (a) DB Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each DB Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such DB Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same. In the event that DB Co receives a Notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such Notice of default to the City.

8.2 Ancillary Documents

- (a) DB Co shall not:

- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 27.3, 49.3 and 50.2 or otherwise to prevent or cure a DB Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such DB Co Event of Default);
- (ii) subject to Section 8.2(a)(i) above, make or agree to any amendment, restatement or other modification or exercise any of its rights under any Ancillary Document that materially adversely affects DB Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of the City, whether actual or potential;
- (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, if any such breach (or waiver or lapse) would materially adversely affect DB Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of the City, whether actual or potential; or
- (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 8.2(a)(i),

without the prior written consent of the City, provided that, where consent is requested pursuant to Section 8.2(a)(i) or 8.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 8.2(a)(i) or 8.2(a)(iv) will not materially adversely affect DB Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of the City, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 8.2(a)(i), or the entering into of any agreement replacing all or part of any Ancillary Document as described in Section 8.2(a)(iv), DB Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 49.3.

- (b) Upon the written request of the City or the City Representative, DB Co will deliver or cause to be delivered to the City or the City Representative a copy of any notices delivered or received by DB Co under any of the Ancillary Documents.

8.3 Changes to Lending Agreements and Refinancing

- (a) Subject to the terms of the Lenders' Direct Agreement, DB Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if at the time such action is contemplated and effected, it would materially adversely affect DB Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing the liability of the City whether actual or potential, unless such action is a Permitted Borrowing or a Refinancing effected in accordance with the provisions of Schedule 28 – Refinancing.

8.4 Compliance with Lending Agreements

- (a) DB Co shall keep the Lending Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and the Project Documents, and shall ensure that none

of the terms and conditions of the Lending Agreements shall prevent DB Co from performing its obligations under this Project Agreement or the Project Documents.

9. THE CITY RESPONSIBILITIES

9.1 General

- (a) The City shall, at its own cost and risk:
 - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
 - (ii) obtain, maintain, and, as applicable, renew the City Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
 - (iii) comply with all City Permits, Licences, Approvals and Agreements, in accordance with their terms, and other Permits, Licences, Approvals and Authorizations to the extent obligations thereunder attributable to the City are within the actual knowledge of the City, and are not otherwise required be undertaken or assumed by DB Co hereunder; and
 - (iv) cooperate with DB Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that the City shall not be under any obligation to perform any of DB Co's obligations under this Project Agreement.
- (b) The City shall, and shall cause all City Parties and MTO to, take reasonable steps to minimize undue interference with the provision of the Works by DB Co or any DB Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of the City or any City Party or Government Entity in fulfilling its statutory or other functions under Applicable Law, and DB Co understands and agrees that nothing in this Project Agreement shall preclude the City from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. DB Co further agrees that it shall comply, and shall cause all relevant DB Co Parties to comply, with all written directions issued by or on behalf of the City (or any respective designate appointed) from time to time, subject to Section 31.1(b).
- (d) The City may, acting in its sole discretion, without legal obligation to do so and at the expense of DB Co, take such commercially reasonable steps as DB Co may request to facilitate access for DB Co to Highway Corridor Lands to the extent DB Co may reasonably require to perform the Construction Activities provided that DB Co has demonstrated to the reasonable satisfaction of the City, that it has not been able to gain such access through the use of its own commercially reasonable efforts.
- (e) Notwithstanding the provisions of Section 11.8(a)(i), the City shall be responsible for all designations, assumptions, road closures, transfers and any other applicable requirements relating to any DB Co Permits, Licences, Approvals and Agreements which can only be effected by the City pursuant to the *Municipal Act, 2001* (Ontario), subject to receipt by the City of any required consent(s) from the Crown in right of Canada and subject to DB Co having, at its own cost, provided or caused to be provided such information, documentation, and technical or administrative assistance, as the City may request and as DB Co may reasonably be able to provide to enable the City to effect such requirements.

10. DB CO RESPONSIBILITIES – GENERAL

10.1 Other Business

- (a) DB Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project without the prior written consent of the City, in its sole discretion.

10.2 Complete and Operational New City Infrastructure and New MTO Infrastructure

- (a) DB Co shall design, engineer, construct and commission the New City Infrastructure and the New MTO Infrastructure so as to provide the City with complete and operational New City Infrastructure and New MTO Infrastructure in accordance with the Output Specifications, and the DB Co Proposal Extracts, all in accordance with and subject to the terms of this Project Agreement.

10.3 General Responsibilities and Standards

- (a) DB Co shall, at its own cost and risk, perform and complete the Works:
- (i) in accordance with the Works Schedules and, in this regard, shall commence the Works no later than the day following Financial Close and, subject to adjustment as provided for in the Project Agreement, achieve:
 - (A) East Substantial Completion by the East Scheduled Substantial Completion Date;
 - (B) East Final Completion by the East Scheduled Final Completion Date;
 - (C) West Substantial Completion by the West Scheduled Substantial Completion Date; and
 - (D) West Final Completion by the West Scheduled Final Completion Date;
 - (ii) in compliance with Applicable Law;
 - (iii) so as to satisfy the Output Specifications;
 - (iv) in compliance with all Permits, Licences, Approvals and Agreements and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Agreements;
 - (v) in accordance with Good Industry Practice and to meet the standards followed by professionals, manufacturers, contractors and trades who are experienced in work on infrastructure that is comparable to the New City Infrastructure and the New MTO Infrastructure;
 - (vi) in a manner consistent with the Integrated Management System and Integrated Management Plans, and the DB Co Proposal Extracts;

- (vii) in a timely and professional manner;
 - (viii) with due regard to the health and safety of persons and property;
 - (ix) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of the City, any City Party or any Government Entity to comply with Applicable Law; and
 - (x) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Governmental Activities; and
 - (xi) in accordance with all other terms of this Project Agreement.
- (b) DB Co shall cooperate with the City in the fulfillment of the purposes and intent of this Project Agreement, provided however that DB Co shall not be under any obligation to perform any of the City's obligations under this Project Agreement.
- (c) DB Co shall, at its own cost and risk:
 - (i) without prejudice to the City's obligations under Sections 9 and 16.1, coordinate with the City all Construction Activities relating to Existing Infrastructure and Stage 1 Connection Infrastructure owned by the City or MTO and the New MTO Infrastructure, including the provision of the Works Schedules, and any updates to the Works Schedules relating to such infrastructure, so as to minimize the impact of Construction Activities on City or MTO operations and services provided by the City or MTO to the public; and
 - (ii) subject to Section 11.29, enter into any Utility Agreements that may be required by Utility Companies to complete the Works;
- (d) [Not used]
- (e) DB Co shall, at its own cost and risk, as soon as possible, and in any event within twenty-four (24) hours of its receipt or notice, notify the City of receipt or notice of (and provide the City with copies of any correspondence received in relation to) any incident report, investigation report or similar correspondence (in each case, whether in draft or final form) issued by the MOL or any other Governmental Authority in respect of the Works.
- (f) If the City has executed an agreement with MTO in relation to this Project (a "**Stakeholder Agreement**"), then the following shall apply:
 - (i) the City shall provide a copy of the Stakeholder Agreement to DB Co, and DB Co shall not, and shall ensure that the DB Co Parties do not, in any way whatsoever, contravene or cause the City to contravene the Stakeholder Agreement; and
 - (ii) to the extent that DB Co's performance of its obligations set out in Section 10.3(f)(i) would result in a material change to the Works, or materially adversely affects DB Co's cost of, or schedule for, performing the Works, and would not otherwise be required of DB Co under the Project Agreement, then such change shall, subject and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

11. DB CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION

11.1 Development of Design

- (a) DB Co shall, at its own cost, develop and complete the design of the New City Infrastructure and the New MTO Infrastructure and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 11.1.
- (b) In order to develop the detailed design of the New City Infrastructure and New MTO Infrastructure, DB Co shall consult with the Stakeholders (which consultation requirements pursuant to the Environmental Assessments are further described in Schedule 17 – Environmental Obligations), the City Representative and the City Design Team in an interactive process. If the result of any consultation with Stakeholders is a change to the scope, configuration or size of any New City Infrastructure or New MTO Infrastructure or a change in the Works, then such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (c) The further development of the design of the New City Infrastructure and New MTO Infrastructure and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (d) The Parties agree that Appendix A to Schedule 10 – Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design and construction documentation (to a scale required by the City Design Team) for each of the following:
 - (i) design development drawings, reports, schedules and specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawings, submitted at,
 - (A) Pre-Final Design Development (PFDD); and
 - (B) Final Design Development (FDD);(collectively, the “**Design Development Submittals**”);
 - (ii) working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement, submitted upon completion thereof and as required in accordance with Schedule 10 – Review Procedure (the “**Construction Document Submittals**”);
 - (iii) Permit, Licence, Approval and Agreement drawings (phased, if applicable); and
 - (iv) all other reports, studies, plans and documentation required pursuant to Schedule 10 – Review Procedure or otherwise identified in the Project Agreement.
- (e) DB Co shall submit to the City Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Section 11.1(d).

- (f) The Design Data and other items listed in Section 11.1(d) must contain, at a minimum, the information required pursuant to Article 3 of Schedule 10 – Review Procedure.
- (g) The Design Data and other items listed in Section 11.1(d) must contain, at a minimum, the following additional information:
 - (i) identification of the stage of design or construction to which the documentation relates;
 - (ii) all design or construction drawings and specifications necessary to enable the City Representative to make an informed decision as to whether DB Co is permitted to proceed pursuant to Schedule 10 – Review Procedure;
 - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
 - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (h) All design review meetings held by DB Co pursuant to the Review Procedure which the City wishes to attend shall be held in Ottawa, Ontario unless the City otherwise agrees in writing.
- (i) If DB Co commences or permits the commencement of the next level of design or construction of any part or parts of the New City Infrastructure prior to being entitled to proceed in accordance with Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then DB Co shall forthwith, at its own cost and risk, undo, remove from the New City Infrastructure and/or Lands, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (j) Subject to Sections 18.5 and 18.7, neither the City nor any City Party will have any liability:
 - (i) if a document submitted by DB Co and reviewed by the City, the City Representative or the City Design Team results in non-compliance with this Project Agreement by DB Co or a breach by DB Co of Applicable Law; or
 - (ii) for any loss or claim arising due to some defect in any documents, drawings, specifications or certificates submitted by DB Co.
- (k) DB Co and the City will cooperate with each other in the design review process. Notwithstanding such cooperation by the City, such review shall not constitute acceptance of the Works, and DB Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (l) DB Co shall allow the City Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the City Representative as soon as practicable following receipt of a written request from the City Representative.

- (m) DB Co shall cause the Construction Contractor to establish and maintain a computerized design database and a web based Review Procedure Activities Register, which DB Co and the City may access remotely by computer to:
 - (i) view drawings comprised within the Design Data;
 - (ii) electronically store and print copies of such Design Data; and
 - (iii) track the status of each Works Submittal, pursuant to Article 3 of Schedule 10 – Review Procedure.

11.2 Start-Up Meeting

- (a) Within 10 Business Days after the date of this Project Agreement, DB Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with the City to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
 - (i) DB Co’s plan to develop a successful partnership with the City for the purpose of supporting the City in achieving its vision, mission and core values;
 - (ii) DB Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
 - (iii) DB Co’s process to ensure optimum design quality;
 - (iv) DB Co’s approach to ensure that all DB Co Parties perform the Works, as applicable, as a fully integrated team;
 - (v) DB Co’s approach to a fully integrated interior design process that includes every element of interior finishes, furniture, fixtures, equipment, occupant signage and wayfinding;
 - (vi) a proposed schedule of Works Submittals which is consistent with the Proposed Works Schedule and which provides for a progressive and orderly flow of Works Submittals from DB Co to the City Representative to allow sufficient time for review of each Works Submittal by the City Design Team, taking into account both the resources available to the City Design Team to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on DB Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule;
 - (vii) DB Co’s plan to successfully integrate feedback from consultations with Stakeholders and the City Design Team, in accordance with, and subject to, the Review Procedure;
 - (viii) any issues related to Schedule 34 – Mobility Matters;
 - (ix) DB Co’s approach to timing, construction, adjustment and user feedback on required mock-ups; and

- (x) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation.

11.3 [Not Used]

11.4 Performance of Design Obligations

- (a) In the design and engineering of the Project, DB Co, its consultants and the DB Co Parties shall, at a minimum, exercise the standard of care normally exercised by licensed or registered professional architectural and engineering personnel having specialized knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) DB Co shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, Output Specifications and codes, and as otherwise required by Applicable Law.

11.5 Works Submittals

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the,
 - (i) East Works to be submitted to, reviewed or otherwise processed by the City prior to East Substantial Completion; and
 - (ii) West Works to be submitted to, reviewed or otherwise processed by the City prior to West Substantial Completion,

including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by the City pursuant to Schedule 10 – Review Procedure. The first document to be submitted by DB Co for review by the City pursuant to Schedule 10 – Review Procedure shall be the draft document control and security protocol described in Section 42.5(f).

11.6 Documents

- (a) DB Co shall keep one copy of the current digital files of the Project Agreement, Project Documents, Works Schedule, submittals, reports, Variation Confirmations, DB Co Variation Notices, Variation Directives, partnering documents, records of meetings and all other documents necessary for the administration of the Project, all in good order and readily accessible and available to the City, Lenders' Consultant and the City Representative.
- (b) DB Co shall, where practical, keep one copy of current standards and manufacturers' literature specified in the Project Documents in good order and readily accessible and available to the City Representative and Lenders' Consultant and their representatives for the duration of the Works.

11.7 General Construction Obligations

- (a) Without limiting Section 10.3:
- (i) DB Co is solely responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the New City Infrastructure and the New MTO Infrastructure, and all other performance of the Works, save to the extent such equipment and materials are to be provided by the City or RTG as specified in Schedule 15-2 Part 3, Appendix A.
 - (ii) DB Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
 - (A) construct the Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 11 – Integrated Management System Requirements;
 - (B) ensure that
 - (I) no works other than the Works under this Project Agreement are constructed on the Lands, the New City Infrastructure, the New MTO Infrastructure, the Existing Infrastructure or the Stage 1 Connection Infrastructure by DB Co, any DB Co Party or any person for whom DB Co is responsible at law; and
 - (II) the New City Infrastructure is constructed only on the Lands in accordance with Schedule 15 – Output Specifications;
 - (C) protect the Works from all of the elements, casualty and damage;
 - (D) in respect of plant, equipment, Products and materials incorporated in the Works, use plant, equipment, Products and materials that:
 - (I) are of a kind that are consistent with the Output Specifications;
 - (II) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice, including, with respect to health and safety, so as not to be hazardous or dangerous; and
 - (III) where they differ from the Output Specifications, have been substituted with the City's prior written consent in accordance with Section 11.20.
 - (iii) Without limiting DB Co's obligations pursuant to Section 11.11 or DB Co's indemnity pursuant to Section 46.1, DB Co shall, from commencement of the Works until East Substantial Completion in respect of the System Infrastructure comprising the East Works, West Substantial Completion in respect of the System Infrastructure comprising the West Works, the applicable Handover in respect of the New MTO Infrastructure, and the applicable New Municipal Infrastructure Component Acceptance Date in respect of

the New Municipal Infrastructure, be responsible for maintaining and securing the Site to prevent access onto the Site, the New City Infrastructure, the New MTO Infrastructure and the elements of the Existing Infrastructure on which Works will be performed (during such times as it has care and custody of such Existing Infrastructure) of any persons not entitled to be there, and the licence granted to DB Co pursuant to Section 16.1 shall include rights for DB Co to do so.

- (iv) DB Co shall not, and DB Co shall ensure that the DB Co Parties do not, in any way whatsoever, contravene or cause a contravention of any labour-related contractual obligation or agreement, to the extent that DB Co has been notified of the same, or any provision of any disclosed collective agreement to which the City or MTO is a party that is applicable to the New MTO Infrastructure or New City Infrastructure and constructed pursuant to the Project Agreement, as such disclosed collective agreements or labour-related agreements may be amended from time to time. To the extent that compliance with any amendments made to any such disclosed collective agreements or labour-related agreements, or to the extent any such disclosed collective agreements or labour-related agreements entered into or disclosed to DB Co after Financial Close, adversely interferes with DB Co's ability to perform the Works or materially adversely affects DB Co's cost of, or schedule for, performing the Works, the same shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (b) DB Co shall provide a new construction site office for use by the City at each location specified in Schedule 15 – Output Specifications, upon DB Co's mobilization to the Site at such location, and in accordance with the requirements set out in Schedule 15 – Output Specifications.

11.8 Permits, Licences, Approvals and Agreements

- (a) DB Co shall, at its own cost and risk:
 - (i) obtain, maintain, and, as applicable, renew all DB Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
 - (ii) except for those obligations which are identified as the City obligations in Schedule 35 – Permits, Licences, Approvals and Agreements, assume all of the obligations of the City under the City Permits, Licences, Approvals and Agreements (and for greater certainty, the Development Approvals);
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms; and
 - (iv) provide all security, including all letters of credit, that may be required in connection with any DB Co Permits, Licences, Approvals and Agreements, provided that, if the City is able to obtain an exemption from such security on behalf of DB Co and with respect to the Project,
 - (A) DB Co shall provide to the City an accurate accounting of the costs and expenses avoided by DB Co as a result of any such exemption; and

- (B) the City shall be permitted to deduct an amount equal to all costs and expenses that were avoided by DB Co as a result of any such exemption from a Substantial Completion Payment.
- (b) Where any DB Co Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on the City or any City Party or RTG or any RTG Party, DB Co shall not obtain, amend or renew (other than upon the same terms and conditions) such DB Co Permits, Licences, Approvals and Agreements without the prior written consent of the City, such consent not to be unreasonably withheld or delayed, provided that none of the City, any City Party, RTG or any RTG Party shall be responsible for obtaining or for the failure of DB Co to obtain any DB Co Permit, Licence, Approval and Agreement. The City shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on the City or any City Party or RTG or any RTG Party by the requirements of any DB Co Permit, Licence, Approval and Agreement obtained with the City's consent under this Section 11.8(b).
- (c) The City shall provide DB Co with such information and administrative assistance as DB Co may reasonably require in relation to the Permits, Licences, Approvals and Agreements. In respect of Section 11.8(a)(ii), the City shall,
 - (i) provide DB Co with relevant information and copies of notices received under the applicable City Permits, Licences, Approvals and Agreements; and
 - (ii) execute any documents under the applicable City Permits, Licences, Approvals and Agreements which Applicable Law dictates that only the City can execute.
- (d) DB Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as the City may request and as DB Co may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable the City to obtain, maintain or renew any of the City Permits, Licences, Approvals and Agreements or to demonstrate compliance with any Permits, Licences, Approvals and Agreements, provided that DB Co shall not be responsible for obtaining or for any delay in obtaining or for the failure of the City to obtain any of the City Permits, Licences, Approvals and Agreements, unless such delay or failure is caused by any act or omission of DB Co, any DB Co Party or any other person for whom DB Co is responsible at law.
- (e) If, prior to the applicable Scheduled Substantial Completion Date, the City fails to issue to DB Co a final determination (a granting, conditional granting, or refusal) in respect of a Listed DB Co PLAA prior to the expiration of **[REDACTED]** per cent of the number of Business Days (rounding up to Business Days if such calculation results in a certain number of Business Days plus a fraction of a Business Day) designated for a final determination by the City in Appendix A to Schedule 35 – Permits, Licences, Approvals and Agreements for the applicable Listed DB Co PLAA (the “**City PLAA Deadline**”), then any delay in the Works or additional costs in respect of the Works caused by the failure to make a final determination by the City PLAA Deadline shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event, provided that:
 - (i) the applicable DB Co Permit, Licence, Approval or Agreement is a Listed DB Co PLAA;
 - (ii) DB Co has fulfilled all obligations pursuant to the Applicable Law, in accordance with any deadline applicable to the Listed DB Co PLAA imposed by this Project Agreement

- or the City, including providing timely and thorough responses to questions or concerns posed by the City in respect of the Listed DB Co PLAA;
- (iii) DB Co submitted the applicable Listed DB Co PLAA in accordance with the timing for such submission in the Works Schedule or Recovery Schedule, as applicable (in each case, as such submission date may be extended on account of any Delay Event); and
 - (iv) DB Co's application for the Listed DB Co PLAA and DB Co's responses to all questions or concerns posed by the City were in accordance with Good Industry Practice.
- (f) For clarity, Section 11.8(e) does not entitle DB Co to a Delay Event or a Compensation Event,
- (i) in the event that the City's final determination on a Listed DB Co PLAA is made in a timely way, pursuant to the applicable City PLAA Deadline, but is not favourable to DB Co or DB Co disagrees with the substance of the final determination;
 - (ii) in the event that the City fails to issue to DB Co a final determination in respect of a Permit, Licence, Approval or Agreement that is not explicitly listed as a Listed DB Co PLAA; or
 - (iii) with respect to,
 - (A) Permits, Licences, Approvals or Agreements that are related to, but not explicitly included on, the Listed DB Co PLAAs; or
 - (B) the Traffic and Transit Management Plan.
- (g) DB Co shall, at its own cost and risk, provide to the City a system to track the status of each Listed DB Co PLAA through every stage of preparation, submission and approval. More specifically, such system shall:
- (i) be kept updated on a daily basis and be available to the City in real time during normal business hours through a web-based interface which would include functionality to provide automated email alerts to a customizable frequency and set of email addresses;
 - (ii) be operational no later than the date upon which the first Listed DB Co PLAA application is submitted; and
 - (iii) include a feature that highlights to the City each outstanding applicable Listed DB Co PLAA when it reaches the following milestone triggers:
 - (A) **[REDACTED]**% of the number of Business Days designated for a final determination by the City in Appendix A to Schedule 35 – Permits, Licences, Approvals and Agreements for the applicable Listed DB Co PLAA;
 - (B) **[REDACTED]**% of the number of Business Days designated for a final determination by the City in Appendix A to Schedule 35 – Permits, Licences, Approvals and Agreements for the applicable Listed DB Co PLAA; and

- (C) 5 Business Days prior to the expiration of the City PLAA Deadline.
- (h) DB Co shall submit documentation on the proposed design, functionality, and usage of the system to the City Representative in accordance with Schedule 10 – Review Procedure no later than 60 days after Financial Close.
- (i) In addition, DB Co shall provide written notice to the City Representative with respect to any outstanding Listed DB Co PLAA when it reaches the milestone triggers outlined in Section 11.8(g)(iii) above.
- (j) With respect to any failure to issue to DB Co a final determination in respect of a Listed DB Co PLAA prior to the expiration of the relevant City PLAA Deadline, DB Co shall not be entitled to the Delay Event or Compensation Event pursuant to Section 32.1(a)(xv) unless the tracking system as described in Section 11.8(g) is functional and available to the City, provides notice to the City of the milestone described in Section 11.8(g)(iii), and contains accurate information as to the status of the applicable Listed DB Co PLAA at all material times.
- (k) With respect to the NCC FLUDTA:
 - (i) the City shall obtain the NCC FLUDTA, but can only do so with DB Co's performance of the obligations set out in Section 11.8(k)(ii);
 - (ii) DB Co shall use commercially reasonable efforts to assist the City in obtaining the NCC FLUDTA as required from time to time including, without limitation:
 - (A) the preparation and delivery of all Design Data in respect of the NCC FLUDTA pursuant to Schedule 10 – Review Procedure;
 - (B) the preparation and delivery of Design Development Submittals and/or Construction Document Submittals pursuant to Section 11.1 that are reasonably necessary to obtain the NCC FLUDTA;
 - (C) the preparation and delivery of such other plans, specifications, agreements, documents and instruments in respect of Works and amendments thereto that are reasonably necessary to obtain the NCC FLUDTA; and
 - (D) DB Co shall make changes to the Design Data as required by NCC to further assist the City in obtaining the NCC FLUDTA and DB Co shall take such other actions as may be reasonably directed by the City from time to time with respect thereto; and
 - (iii) if, following Commercial Close:
 - (A) NCC requires a change to the Design Data or any other additional obligation to be assumed in respect of the NCC FLUDTA pursuant to Section 11.8(a); and
 - (B) the City, in a timely manner, requires DB Co to make such change or to assume such additional obligation,

provided the change or other obligation is not otherwise a responsibility or obligation of DB Co under this Project Agreement, then such change or obligation shall result in a Variation subject to and in accordance with Schedule 22 – Variation Procedure.

11.9 Protection of Work and Property

- (a) DB Co shall protect (i) the Works and the property of the City on the Site, the New City Infrastructure, the New MTO Infrastructure, and (ii) the Existing Infrastructure and Stage 1 Connection Infrastructure (while the same is in DB Co's possession or at any time such Existing Infrastructure or Stage 1 Connection Infrastructure is the subject of ongoing Works), from damage or destruction caused by DB Co's operations under this Project Agreement, and DB Co shall, in accordance with Section 11.9(b), be responsible for such damage or destruction, except for any damage or destruction which occurs as a result of acts or omissions by the City or any City Party.
- (b) Unless this Project Agreement is terminated in accordance with its terms, and except to the extent a Relief Event or Force Majeure Event occurs in respect of which the policies required to be procured pursuant to Section 1 of Schedule 25 do not respond, if all or any part of the Works is damaged or destroyed prior to the applicable Substantial Completion Date in respect of the System Infrastructure, or prior to the applicable New Municipal Infrastructure Component Acceptance Date in respect of the New Municipal Infrastructure, or prior to the applicable Handover in respect of the New MTO Infrastructure, DB Co shall, at its own cost and expense, Make Good the Works, or any part thereof, as applicable, (the "**Reinstatement Work**") promptly and in any event as soon as practicable in the circumstances. Except as otherwise expressly provided in this Project Agreement, damage to or destruction of all or any part of the Works shall not terminate this Project Agreement or relieve DB Co of any of its obligations hereunder or entitle DB Co to any compensation from the City.
- (c) DB Co shall not undertake to repair and/or replace any damage or destruction whatsoever to adjacent property or any Existing Infrastructure owned by third parties other than MTO without first consulting the City, and in the case of Existing Infrastructure owned by MTO, without first consulting MTO and, in each case, receiving written instructions as to the course of action to be followed.
- (d) Without derogating from any obligations which DB Co may have under any Encroachment Permit, DB Co acknowledges and agrees that the timely performance of Reinstatement Work relating to damage or destruction to Existing Infrastructure owned by MTO or New MTO Infrastructure (but in all cases subject to the time period limitations provided in Sections 11.9(b)) is critical to the ability of MTO to maintain effective operations of such infrastructure. DB Co will respond to any requirement by MTO to perform Reinstatement Work within the time periods required by MTO, acting reasonably having regard to the nature of the Reinstatement Work. DB Co acknowledges and agrees that if MTO is unable to contact DB Co and/or obtain the Reinstatement Work within the time specified by MTO, MTO may take such emergency steps as are reasonable and appropriate to correct any damage or destruction or failures to comply with the Project Agreement, at DB Co's sole risk, cost and expense. Except in the case of damage caused by MTO's own forces, such emergency steps taken by MTO shall not invalidate any DB Co warranties in respect of the Works.

- (e) Notwithstanding Sections 11.9(b) and 11.9(f), Reinstatement Work carried out by DB Co in respect of New MTO Infrastructure that is not owned by MTO shall be planned and implemented by DB Co in consultation with the applicable third party.
- (f) If the Reinstatement Work is reasonably estimated to cost more than \$[REDACTED] (index linked) or in any other case where the City Representative, having regard to the nature of the damage or destruction, notifies DB Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the applicable time periods provided in Section 11.9(b) and the City Representative acting reasonably considers that the continued application of the Design and Construction Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), DB Co shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the City Representative, as the case may be, or, if such Reinstatement Work is in respect of Highway Works, such period of time as may be required to comply with directions of MTO, (or if, with the exercise of all due diligence more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the City Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided DB Co exercises and continues to exercise all such due diligence) submit to the City Representative pursuant to Schedule 10 - Review Procedure a plan (a “**Reinstatement Plan**”) prepared by DB Co for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:
 - (i) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction;
 - (ii) DB Co’s proposed schedule for the execution of the Reinstatement Work; and
 - (iii) the information required pursuant to Schedule 22 – Variation Procedure as if such plan were an Estimate,

and the Reinstatement Work must not be commenced until the City Representative consents thereto in accordance with Schedule 10 - Review Procedure except (A) where such Reinstatement Work relates to Existing Infrastructure owned by MTO or New MTO Infrastructure and MTO requires performance of such Reinstatement Work on an expedited basis, or (B) to the extent necessary to address any Emergency, public safety needs. Notwithstanding Sections 11.9(c), (e) and (f), where there is danger to life or property which arises out of or in connection with the performance of the Works, either Party may, but DB Co shall, immediately take such emergency action as is necessary to remove the danger.

- (g) DB Co shall cause the Reinstatement Work to be carried out in accordance with the Output Specifications and all other applicable requirements under this Project Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the City Representative in accordance with Schedule 10 - Review Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Construction Certification Procedure. If requested by the City Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to the City) retained by DB Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a construction contract with DB Co and a direct agreement with the City in substantially the same forms as the Design and Construction Contract and the Construction Contractor’s Direct Agreement.

- (h) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 30 - Insurance Trust Agreement are available to carry out the Reinstatement Work, such Insurance Proceeds shall be paid into the Insurance Trust Account and shall be dispensed in accordance with the provisions of the Insurance Trust Agreement to carry out the Reinstatement Work.

- (i) [Not used]

11.10 Liability Unaffected

- (a) DB Co shall not be relieved of any liability or obligation under this Project Agreement by the retainer or appointment of any DB Co Party, and DB Co shall cause each DB Co Party, to the extent such DB Co Party performs, or is specified hereunder to perform, the Works, to comply with the obligations of DB Co to the City in the same manner and to the same extent as DB Co.
- (b) No inspection, review, comment, approval, verification, confirmation, certification, acknowledgement or audit pursuant to the provisions of this Project Agreement by the City, the City Representative, Lenders' Consultant, MTO, RTG, or anyone on their behalf, nor any failure of any of them to do so, shall relieve DB Co from performing or fulfilling any of its obligations under this Project Agreement or be construed as an acceptance of the Works or any part thereof.

11.11 Safety

- (a) DB Co shall, from Financial Close until the East Substantial Completion in respect of the System Infrastructure comprising the East Works, West Substantial Completion in respect of the System Infrastructure comprising the West Works, the applicable New Municipal Infrastructure Component Acceptance Date in respect of the New Municipal Infrastructure, the applicable Handover in respect of the New MTO Infrastructure, and West Final Completion in respect of the Remaining Works:
 - (i) comply with the health and safety requirements in Schedule 11 – Integrated Management System Requirements of the Project Agreement, its Integrated Management System, and the Construction Safety Management Plan;
 - (ii) keep the Site (including Existing Infrastructure on the Site), the Works, the New City Infrastructure and the New MTO Infrastructure in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site (including Existing Infrastructure on the Site), the New City Infrastructure and the New MTO Infrastructure and in the immediate vicinity of the Site (including Existing Infrastructure on the Site), the New City Infrastructure and the New MTO Infrastructure;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site (including Existing Infrastructure on the Site), the New City Infrastructure and the New MTO Infrastructure of any persons or creatures not entitled to be there;
 - (iv) comply, and cause each DB Co Party to comply,
 - (A) with Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;

- (B) with the Construction Access Management Plan, the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in Schedule 15 – Output Specifications; and
 - (C) with any direction or instruction from Transport Canada pursuant to any contractual arrangement or board order involving Transport Canada and MTO with respect to the System Infrastructure corridor and facilitate and provide cooperation with respect to any inspections by Transport Canada on the Lands.
 - (v) register the Project with the MOL by way of a Notice of Project, pursuant to the Applicable Law, with the purpose of designating DB Co as the “constructor” for all Works on the Site;
 - (vi) with respect to the Works, cause a COR-Certified Construction DB Co Party or, prior to receipt of COR Certification, a COR-Qualified Construction DB Co Party, to perform, all of the obligations of the “constructor”, and indemnify the City, each City Party and each Government Entity against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
 - (vii) provide the City with a certificate of good standing from WSIB or any successor thereto once every 90 days; and
 - (viii) facilitate and provide cooperation with respect to any inquiry or investigation of the MOL with respect to the Project.
- (b) New MTO Infrastructure and New City Infrastructure shall, for the all purposes of this Project Agreement, become Existing Infrastructure upon the earlier of, in the case of,
- (A) New MTO Infrastructure, the applicable Handover; and
 - (B) System Infrastructure comprising the East Works, East Substantial Completion;
 - (C) System Infrastructure comprising the West Works, West Substantial Completion; and
 - (D) New Municipal Infrastructure, the applicable New Municipal Infrastructure Component Acceptance Date.
- (c) At any time that the Works are being carried out in or around the Existing Infrastructure or Stage 1 Connection Infrastructure, DB Co shall at all times:
- (i) ensure that it complies with all safety requirements set out in the Project Agreement, including those set out in Section 11.11(a) above; and
 - (ii) keep the Existing Infrastructure or Stage 1 Connection Infrastructure in a safe and orderly state, as appropriate and in accordance with Good Industry Practice, to avoid any danger

to the System Users, employees, visitors and other persons attending the Existing Infrastructure or Stage 1 Connection Infrastructure.

- (d) If the MOL determines pursuant to the *Occupational Health and Safety Act* (Ontario) that DB Co is not the “constructor” for the Site or any portion thereof, then the following shall apply:
 - (i) DB Co shall comply with the instructions of the “constructor” relating to matters of health and safety on the Site, or such portion thereof, methods and manner of construction, and coordination and scheduling of the “constructor’s” works with the Works.
 - (ii) If DB Co’s activity or presence on the Site causes the City to be named “constructor” by MOL, DB Co will immediately take any necessary remedial action, including vacating the Site, to ensure that the MOL determines that DB Co is the “constructor”.
 - (iii) If a third party is named “constructor” by MOL, DB Co shall not interfere with or delay the third party’s work, and shall not do anything whatsoever that causes the third party to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario). DB Co shall immediately cease and desist any activity that results or has a likelihood of resulting in such interference with or delay of the work of the third party.
 - (iv) DB Co shall indemnify the City, each City Party and each Government Entity against any and all of the liabilities arising from a determination by the MOL that the City, or both the City and a third party contractor has been designated as the “constructor”, under the *Occupational Health and Safety Act* (Ontario).
- (e) In the event that an act or omission of DB Co causes or contributes to an MOL determination that DB Co is not the “constructor” for its work, or if DB Co is denied access to the Site pursuant to Section 11.11(d)(iii), DB Co will not be eligible for a Delay Event or a Compensation Event.

11.12 Additional Works, Third Party Works and RTG Works

- (a) DB Co shall, having regard to DB Co’s obligations set out in Section 17, arrange and carry out all coordination of the Works with the Third Party Works directly with the applicable Third Party Contractor.
- (b) The City may, in its sole discretion, carry out Additional Works.
- (c) From Financial Close until the Substantial Completion Date for the Works affected by such Additional Works, the City may assign the responsibility for directing methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the safety training in respect of the Additional Works to DB Co. For clarity, the City may, in its sole discretion, assign such responsibilities to DB Co, subject to Section 11.12(h).
- (d) In connection with the Additional Works, the City shall,
 - (i) cause Additional Contractors to comply with the instructions of DB Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with the Works;

- (ii) enter into separate contracts with Additional Contractors,
 - (A) under conditions of contract which are compatible with the conditions of this Project Agreement;
 - (B) that require Additional Contractors to comply with Section 11.12(e) and all directions of DB Co in respect of any matter regarding health and safety on the Site, and methods and manner of construction (where applicable); and
 - (C) that require Additional Contractors to comply with DB Co's coordination and scheduling of the Additional Works; and
- (iii) ensure that insurance coverage is provided by each Additional Contractor as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of DB Co and in any event, such insurance shall provide for liability insurance of not less than \$[REDACTED].
- (e) In connection with the Additional Works, if the City has assigned responsibilities to DB Co pursuant to Section 11.12(c), DB Co shall,
 - (i) provide for the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works to be performed under this Project Agreement;
 - (ii) for each of the East Works, West Works and Highway Works, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety at the Site, including all the responsibilities of the "constructor" under the Occupational Health and Safety Act (Ontario), prior to the applicable Substantial Completion Date and, exercised in a manner consistent with the *Occupational Health and Safety Act* (Ontario), at any time that DB Co is acting as a "constructor" on the Site, or the applicable portion thereof, following the applicable Substantial Completion Date;
 - (iii) provide Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works, as applicable;
 - (iv) participate with the City and Additional Contractors in reviewing the construction schedules of Additional Contractors, when directed to do so by the City; and
 - (v) if part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly report to the City in writing and prior to proceeding with that part of the Works any readily apparent deficiencies in the Additional Works. Failure by DB Co to so report shall invalidate any claims against the City by reason of such readily apparent deficiencies.
- (f) In the case of Additional Works carried out prior to the last Substantial Completion, if:
 - (i) any Additional Contractors cause any damage to the Works;

- (ii) DB Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Contractors not complying with the coordination, scheduling and safety instructions of DB Co; or
- (iii) subject to the performance by DB Co of its obligations under this Section 11.12, if DB Co incurs any additional costs or there is any delay in the Works Schedule as a result of any such Additional Works,

then any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

- (g) Claims, disputes, and other matters in question between DB Co and Additional Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure provided the Additional Contractors are subject to reciprocal dispute resolution obligations in the contracts between the City and the Additional Contractors. DB Co shall be deemed to have consented to arbitration of any dispute with any Additional Contractor whose contract with the City contains a reciprocal agreement to arbitrate.
- (h) In connection with the Additional Works, DB Co may request a Variation as follows:
 - (i) DB Co shall have a period of 10 Business Days following Notice from the City of the City's intention to carry out such Additional Works, including a reasonable description of such Additional Works, to request a Variation if such Additional Works are
 - (A) reasonably expected to make void a warranty made in favour of DB Co from a DB Co Party or equipment supplier and given in accordance with Good Industry Practice; or
 - (B) reasonably expected to have a material negative consequence on DB Co's ability to perform any of the Works, including a material delay in performance of the Works, or material additional costs in respect of the Works;
 - (ii) If DB Co has made a request for a Variation in accordance with Section 11.12(h)(i), the City shall, within 10 Business Days after such request, either issue a Variation Enquiry or give Notice to DB Co that it does not agree that a Variation is required;
 - (iii) Either Party may refer the question of whether a Variation is required for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iv) If the City has, under Section 11.12(h)(ii), given Notice to DB Co that it does not agree that a Variation is required, the City shall, within 10 Business Days after a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) the City shall not be entitled to withdraw any such Variation Enquiry unless the City determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void or will not result in any material negative consequence on

DB Co's ability to perform any of the Works and DB Co has agreed with such conclusion, or the Parties otherwise agree; and

- (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (i) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors on and to the Works performed by DB Co shall not relieve DB Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.
- (j) In connection with the RTG Stage 1 PA Works and RTG City Party Works, the City shall enter into and/or maintain contractual terms with RTG, including the Stage 1 Project Agreement and variations thereto,
 - (i) which are compatible with the conditions of this Project Agreement;
 - (ii) that require RTG and RTG Parties to comply with directions of DB Co in respect of any matter regarding health and safety on the Site;
 - (iii) that require RTG and RTG Parties to take reasonable steps to minimize undue interference with the provision of the Works by DB Co or any DB Co Party; and
 - (iv) in respect of the RTG Systems Integration Works, that require RTG and RTG Parties to comply with the Systems Integration Management Plan.
- (k) In the case of RTG Stage 1 PA Works and RTG City Party Works, if:
 - (i) RTG or any RTG Party causes any damage to the Works; or
 - (ii) DB Co incurs any additional costs or there is any delay in the Works Schedule as a result of any act or omission of RTG or any RTG Party, including due to non-compliance with the Systems Integration Management Plan by RTG or any RTG Party in the performance of the RTG Systems Integration Works or RTG Stage 1 PA Works,then any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (l) To the extent that any City Party or Additional Contractor (other than RTG or an RTG Party) undertakes Remaining System Integration Work or any of the activities outlined in Section 5.2(m) of Schedule 15-2 Part 1, then the City shall be subject to the same obligations in respect of such City Party or Additional Contractor as set out in Section 11.12(j) and (k) as if such City Party or Additional Contractor were RTG or an RTG Party, *mutatis mutandis*.
- (m) Claims, disputes, and other matters in question between DB Co and RTG shall be dealt with (i) in respect of matters governed by the Interface Agreement, in accordance with the dispute resolution

procedure in the Interface Agreement, and (ii) in respect of all other matters involving the City, in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure and the City shall ensure RTG is subject to reciprocal dispute resolution obligations in the Stage 1 Project Agreement and variations thereto, including in respect of Systems Integration Disputes which shall be referred at first instance to the Systems Integration Verifier in accordance with Schedule 27 – Dispute Resolution Procedure. DB Co shall be deemed to have consented to arbitration of any dispute with RTG.

11.13 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, the City shall not be responsible for the presence of any persons participating in civil disobedience, demonstration or protest action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Lands (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Lands shall not be a breach of the obligation of the City to grant licence rights of use and access to DB Co on and over the Lands pursuant to Section 16 nor a breach of any other obligation, representation or warranty under this Project Agreement.
- (b) Prior to the applicable Substantial Completion Date, the management of any Protesters or Trespassers shall be the responsibility of DB Co in respect of the Site (including Existing Infrastructure on the Site), to the extent such management is not otherwise the responsibility of the Police Service.
- (c) If, prior to the applicable Substantial Completion Date, Protesters or Trespassers occupy the Site, facilities or infrastructure referred to in Section 11.13(b), or access to such Site, facilities, or infrastructure is prevented or interfered with by Protesters or Trespassers, DB Co shall use all appropriate measures reasonable in the circumstances to manage such Protesters or Trespassers and promptly notify the City Representative of such occurrence and of the action which DB Co proposes to take in respect thereof. DB Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Site, facilities or infrastructure referred to in Section 11.13(b), provided that if DB Co does elect to exercise any such legal remedy, DB Co shall give the City Representative at least 24 hours’ Notice prior to commencing any such legal proceeding (except in a case of Emergency, danger to persons or material destruction or material damage to property where, in such circumstances, such Notice may be given to the City less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the City Representative as to the status of any such legal proceeding in reasonable detail and at reasonable intervals, and provided further that:
 - (i) DB Co shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers; and
 - (ii) DB Co shall not by virtue of this Section 11.13(c) be prevented from entering into *bona fide* settlements of claims brought against it by Protesters or Trespassers which provide for reasonable payments in satisfaction of such claims or agreeing to any reasonable cost orders in any proceedings.
- (d) DB Co may request the assistance of the City (at the cost of DB Co) to remove Protesters or Trespassers from the Site, Lands, facilities or infrastructure set out in Section 11.13(b), if DB Co demonstrates to the City’s reasonable satisfaction that:

- (i) DB Co is pursuing legal remedies available to it to remove the Protesters or Trespassers (provided that for this purpose DB Co may, but shall not be obligated to, prosecute injunctive or other judicial remedies beyond the court of first instance); and
- (ii) the continued presence of the Protesters or Trespassers is having a material adverse effect on the conduct of the Works that DB Co is unable to mitigate.

Following such request, the City shall notify DB Co whether the City can lawfully provide any assistance in relation to the removal of the Protesters or Trespassers that is not independently available to DB Co and, to the extent that such assistance can be lawfully provided, the City shall provide such assistance (at the cost of DB Co) to the extent it is, in the discretion of the City, reasonable and appropriate in the circumstances to do so.

11.14 Adjacent Developments

- (a) DB Co shall,
 - (i) having regard to this Section 11.14, review all planning and development applications received from the City in connection with proposed Adjacent Developments;
 - (ii) as required by the City, provide all commercially reasonable assistance to,
 - (A) facilitate the discussion, agreement and any implementation of proposals with respect to Adjacent Developments; and
 - (B) avoid or mitigate any adverse impact of an Adjacent Development on the Works and the New City Infrastructure;
 - (iii) subject to DB Co's reasonable operational and health and safety requirements, permit the developer of the Adjacent Development to post or affix signage in respect of the Adjacent Development, which signage may identify the Adjacent Development project architect, engineer and lender, and other members of the developer's project team;
 - (iv) subject to DB Co's reasonable operational and health and safety requirements, permit the developer of the Adjacent Development to post or affix, at one location on the Lands, signage, as required in connection with a development application; and
 - (v) at the City's request, provide to the developer of an Adjacent Development, all Project documentation in respect of the design and construction of elements of the New City Infrastructure that are relevant to the Adjacent Development, subject to the developer of the Adjacent Development, executing a confidentiality agreement and a waiver of liability, each in a form and substance satisfactory to the City and DB Co, each acting reasonably.
- (b) The City shall ensure that any contract entered into by the City with the developer of an Adjacent Development, in respect of which Section 11.14(a) is reasonably expected to apply, will contain a reciprocal provision to Section 11.14(a) for the benefit of DB Co.
- (c) All work and activities undertaken by DB Co or any DB Co Party pursuant to this Section 11.14 shall be at DB Co's own cost, provided that in the event that more than [REDACTED] Adjacent

Development applications are referred to DB Co by the City in a calendar year, then DB Co shall be entitled to a Variation in respect of the review of such development applications in excess of [REDACTED] applications per calendar year referred to them.

11.15 Defective Works

- (a) Prior to East Substantial Completion and save with respect to possible East Minor Deficiencies identified in accordance with Section 25.10(a), DB Co shall promptly Make Good any Construction Defects in respect of the East Works (an “**East Construction Defect**”) whether or not such East Construction Defect has been incorporated into the New City Infrastructure and whether or not the East Construction Defect is the result of poor workmanship, use of defective Products or equipment or damage through carelessness or other act or omission of DB Co. The correction of East Construction Defects shall be at DB Co’s sole cost and expense. DB Co shall Make Good, in a manner acceptable to the Independent Certifier, or, in the case of New Municipal Infrastructure, the City Engineer, all East Construction Defects, whether or not they are specifically identified by the Independent Certifier or the City Engineer, as the case may be, and DB Co shall prioritize the correction of any East Construction Defects so as not to interfere with or derogate from the Works Schedule, provided that DB Co shall prioritize the correction of any East Construction Defects that in the sole discretion of the City is determined to adversely affect the day to day operation of the City.
- (b) Prior to West Substantial Completion and save with respect to possible West Minor Deficiencies identified in accordance with Section 25.10(b), DB Co shall promptly Make Good any Construction Defect (other than Highway Construction Defects which shall be addressed in accordance with Section 11.15(c)) in respect of the West Works (a “**West Construction Defect**”) whether or not such West Construction Defect has been incorporated into the New City Infrastructure and whether or not the West Construction Defect is the result of poor workmanship, use of defective Products or equipment or damage through carelessness or other act or omission of DB Co. The correction of West Construction Defects shall be at DB Co’s sole cost and expense. DB Co shall Make Good, in a manner acceptable to the Independent Certifier, or, in the case of New Municipal Infrastructure, the City Engineer, all West Construction Defects, whether or not they are specifically identified by the Independent Certifier or the City Engineer, as the case may be, and DB Co shall prioritize the correction of any West Construction Defects so as not to interfere with or derogate from the Works Schedule, provided that DB Co shall prioritize the correction of any West Construction Defects that in the sole discretion of the City is determined to adversely affect the day to day operation of the City.
- (c) Prior to the applicable Handover, DB Co shall promptly Make Good any Construction Defect in respect of the Highway Works (a “**Highway Construction Defect**”) whether or not such Highway Construction Defect has been incorporated into the New MTO Infrastructure and whether or not the Highway Construction Defect is the result of poor workmanship, use of defective Products or equipment or damage through carelessness or other act or omission of DB Co. The correction of Highway Construction Defects shall be at DB Co’s sole cost and expense. DB Co shall Make Good, in a manner acceptable to the Independent Certifier, all Highway Construction Defects, whether or not they are specifically identified by the Independent Certifier, and DB Co shall prioritize the correction of any Highway Construction Defects so as not to interfere with or derogate from the Works Schedule, provided that DB Co shall prioritize the correction of any Highway Construction Defects that in the sole discretion of the City is determined to adversely affect the day to day operation of the City.

- (d) Prior to West Final Completion and save with respect to possible Remaining Works Minor Deficiencies identified in accordance with Section 25.12A(a), DB Co shall promptly Make Good any Construction Defect in respect of the Remaining Works (a “**Remaining Works Construction Defect**”) whether or not such Remaining Works Construction Defect has been incorporated into the New City Infrastructure or the New MTO Infrastructure and whether or not the Remaining Works Construction Defect is the result of poor workmanship, use of defective Products or equipment or damage through carelessness or other act or omission of DB Co. The correction of Remaining Works Construction Defects shall be at DB Co’s sole cost and expense. DB Co shall Make Good, in a manner acceptable to the Independent Certifier, all Remaining Works Construction Defects, whether or not they are specifically identified by the Independent Certifier, and DB Co shall prioritize the correction of any Remaining Works Construction Defects so as not to interfere with or derogate from the Works Schedule, provided that DB Co shall prioritize the correction of any Remaining Works Construction Defects that in the sole discretion of the City is determined to adversely affect the day to day operation of the City.
- (e) In the event DB Co is required to correct a Construction Defect pursuant to this Section 11.15, DB Co shall promptly Make Good other contractors’ work destroyed or damaged by such rectifications at DB Co’s expense.

11.16 Warranty Obligations

- (a) DB Co represents, warrants and covenants that:
 - (i) the East Works, including the New City Infrastructure and all Products, parts and workmanship provided by DB Co and DB Co Parties, including those replaced during the East Warranty Period;
 - (ii) the West Works, including the New City Infrastructure, the New MTO Infrastructure, and all Products, parts and workmanship provided by DB Co and DB Co Parties, including those replaced during the West Warranty Period; and
 - (iii) the Remaining Works, including all Products, parts and workmanship provided by DB Co and DB Co Parties, including those replaced during the Remaining Works Warranty Period,

shall conform to the requirements and specifications set out in this Project Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Ontario; be free of defects, including design defects, errors and omissions; be new, of good quality material, of merchantable quality; and all materials and equipment supplied by DB Co and DB Co Parties shall be of good quality, and in compliance with this Project Agreement and fit for their intended purpose as described in the Project Agreement.

- (b) Subject to Section 11.16(l), DB Co shall promptly, at its sole cost and expense,
 - (i) during the
 - (A) East Warranty Period correct and Make Good all East Construction Defects arising in respect of the East Works;

- (B) West Warranty Period correct and Make Good all West Construction Defects and Highway Construction Defects arising in respect of the West Works; and
 - (C) Remaining Works Warranty Period correct and Make Good all Remaining Works Construction Defects arising in respect of the Remaining Works,
- (ii) for greater certainty, DB Co is required to correct and Make Good any Construction Defects related to any Product provided by DB Co and DB Co Parties, and any equipment supplied by DB Co and DB Co Parties during the applicable Warranty Period despite DB Co having obtained on the City's behalf industry-standard or other equipment warranties in accordance with Section 11.16(e);
- (iii) correct and Make Good any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Works ("**Construction Latent Defect**"), provided the City gives DB Co written Notice of the Construction Latent Defect within the time frame applicable to such Construction Latent Defect pursuant to the *Limitations Act*, 2002 (Ontario) and provided further Construction Latent Defects shall exclude:
 - (A) all electrical and mechanical components of the Works still in service beyond the supplier's recommended useful life, with such recommended useful life being consistent with Good Industry Practice; and
 - (B) any Construction Defects resulting from the effects of corrosion, erosion (other than corrosion or erosion due to Construction Defects in design and /or construction) or normal wear and tear upon any portion of the System Infrastructure or failure of the any portion of the System Infrastructure due to faulty maintenance by RTG or RTG Parties;
- (iv) comply with the Warranty Protocol.
- (c) The warranties set out in Section 11.16(b) shall each cover labour and material, including, the costs of removal and replacement of covering materials. None of the warranties shall limit extended warranties on any Product or any item of equipment called for elsewhere in Schedule 15 - Output Specifications or otherwise provided by any manufacturer of such Product or item of equipment. DB Co shall ensure that all extended warranties specified in the Project Agreement are provided and shall, in the case of the System Infrastructure, assign to the City or such entity as the City may direct, all such extended warranties as the City or its designate may direct, and in the case of the New MTO Infrastructure, assign to the MTO, all such extended warranties the MTO may direct.
- (d) [Intentionally Deleted]
- (e) DB Co shall obtain warranties from the manufacturers of each of the Products and items of equipment for the duration(s) and in accordance with the applicable requirements specified in Schedule 15 - Output Specifications in the name of and to the benefit of DB Co, the City in the case of New City Infrastructure, and the MTO in the case of New MTO Infrastructure. Where, in respect of a Product warranty or equipment warranty, the Output Specifications do not specify a specific duration and/or other requirements, DB Co shall obtain industry-standard warranties

from the applicable manufacturers in the name of and to the benefit of DB Co and the City and shall use commercially reasonable efforts to ensure that such Product warranties and equipment warranties extend for as long a period as possible.

- (f) In respect of the East Works, each Product warranty and equipment warranty shall be issued by the applicable manufacturer and delivered to DB Co no later than 30 days prior to the East Substantial Completion Date. DB Co shall ensure that each Product warranty and equipment warranty, including any Product warranty or equipment warranty extended under Section 11.16(e), is fully assigned to the City, at no cost or expense to the City, at the end of the East Warranty Period, as such East Warranty Period may be extended in accordance with Section 11.16(b).
- (g) In respect of the West Works other than Highway Works, each Product warranty and equipment warranty shall be issued by the applicable manufacturer and delivered to DB Co no later than 30 days prior to the West Substantial Completion Date. DB Co shall ensure that each Product warranty and equipment warranty, including any Product warranty or equipment warranty extended under Section 11.16(e), is fully assigned to the City, at no cost or expense to the City, at the end of the West Warranty Period, as such West Warranty Period may be extended in accordance with Section 11.16(b).
- (h) In respect of the Highway Works, each Product warranty and equipment warranty shall be issued by the applicable manufacturer and delivered to DB Co no later than 30 days prior to the applicable Handover. DB Co shall ensure that each Product warranty and equipment warranty, including any Product warranty or equipment warranty extended under Section 11.16(e), is fully assigned to the City or the MTO, as applicable, at no cost or expense to the City or the MTO, at the end of the West Warranty Period, as such West Warranty Period may be extended in accordance with Section 11.16(b).
- (i) In respect of the Remaining Works, each Product warranty and equipment warranty shall be issued by the applicable manufacturer and delivered to DB Co no later than 30 days prior to, the West Final Completion Date. DB Co shall ensure that each Product warranty and equipment warranty, including any Product warranty or equipment warranty extended under Section 11.16(e), is fully assigned to the City, at no cost or expense to the City, at the end of the Remaining Works Warranty Period, as such Remaining Works Warranty Period may be extended in accordance with Section 11.16(b).
- (j) The City may, in its sole discretion, assign the DB Co warranties set out in Section 11.16(b) that relate to the Highway Works to the MTO, and shall provide Notice to DB Co of any such assignment of DB Co warranties. On the commencement of the first Warranty Period for each of the New City Infrastructure and the New MTO Infrastructure or any component thereof, DB Co shall provide at least two copies of each of the compilations of warranty certificates, one compilation for the New City Infrastructure and one compilation for the New MTO Infrastructure. DB Co shall update all copies of each of the compilations from time to time as each Warranty Period commences. Each of the compilations shall indicate the start and completion date of each DB Co warranty.
- (k) Subject to Section 11.12, DB Co acknowledges that,
 - (i) with respect to the New City Infrastructure, the City may, in its sole discretion; and

(ii) with respect to the New MTO Infrastructure, the MTO may, in its sole discretion,

maintain, repair and/or alter any part or parts of the Works during the applicable Warranty Period and DB Co agrees that such work shall not impact any of the warranties provided by DB Co hereunder, provided that such work is carried out in accordance with Good Industry Practice and, if applicable, the Maintenance Instructions and that such work does not materially alter the affected part or parts of the Works.

(l) For greater certainty, DB Co shall have no obligation under this Section 11.16 to procure, assign or enforce any manufacturer's warranties in respect of any Product or equipment which is procured or obtained by the City, any City Party, RTG or any RTG Party or Make Good any defect of deficiency in respect of the same; provided that DB Co shall not knowingly or negligently undertake any course of action that has the effect of nullifying or materially diminishing the enforceability of any such manufacturer's warranty.

11.17 Warranty Work and Prompt Repair of Warranty Work

(a) DB Co shall carry out all Warranty Work,

(i) in respect of the East Works (such work, the "**East Warranty Work**");

(ii) in respect of the West Works (such work, the "**West Warranty Work**"); and

(iii) in respect of the Remaining Works (such work, the "**Remaining Works Warranty Work**").

All Warranty Work shall be carried out and completed at DB Co's sole cost and expense and Warranty Work shall not be the basis of a claim for a Delay Event, a Compensation Event, a Variation, additional compensation or damages. The applicable Warranty Period shall be extended for a further one year in respect of Remaining Works Warranty Work, and two years in respect of all other Warranty Work, in each case from the date of such Warranty Work is completed and accepted by the City in respect of the New City Infrastructure or any component thereof, and by the MTO in respect of the New MTO Infrastructure or any component thereof. For clarity, any extension of a Warranty Period for the purposes of a correction shall only apply to the relevant Warranty Work and not the Works as a whole, and in no event shall a Warranty Period be extended for a period in excess of two years following the expiry of the initial Warranty Period.

(b) DB Co acknowledges and agrees that, the timely performance of Warranty Work is critical to the ability of the City to maintain effective operations of the New City Infrastructure, and to the ability of the MTO to maintain effective operations of the New MTO Infrastructure. DB Co shall use commercially reasonable efforts to respond to any requirement by the City or the MTO to perform Warranty Work within the reasonable time periods required by the City or the MTO to perform the Warranty Work for the New City Infrastructure or the New MTO Infrastructure, or, where applicable, within such time periods as required in a Warranty Request under the Warranty Protocol. Except where the Warranty Protocol imposes a specific additional obligation, DB Co shall commence and complete Warranty Work as expeditiously as possible and at times convenient to the City or MTO, as applicable, which may require work outside normal working hours at DB Co's expense. Any extraordinary measures required to complete such Warranty Work, as reasonably directed by the City or the MTO to accommodate the operation of the New

City Infrastructure, the New MTO Infrastructure, the Existing Infrastructure, the Stage 1 Connection Infrastructure or other aspects of the Project as constructed, shall be at DB Co's sole cost and expense. In relation to critical areas required for effective operations, DB Co shall commence, carry out and complete all Warranty Work on an urgent basis, as is reasonable having regard to the nature of the Warranty Work, taking into account the circumstances and any timelines for commencement and completion as may be communicated by the City, with respect to the New City Infrastructure, or the MTO, with respect to the New MTO Infrastructure, to DB Co.

(c) DB Co acknowledges and agrees that if,

- (i) subject to the Warranty Protocol, the City with respect to the New City Infrastructure; or
- (ii) the MTO with respect to the New MTO Infrastructure,

is unable to contact DB Co and/or obtain Warranty Work promptly, or, in the case of urgent Warranty Work within the time period specified in accordance with Section 11.17(b), the City and the MTO, as applicable, may take such emergency steps as are reasonable and appropriate to correct any defects, deficiencies or failures to comply with the Project Agreement, at DB Co's sole cost and expense. Except in the case of damage caused by the City's or the MTO's own forces, or where such emergency steps are not performed in accordance with Good Industry Practice or applicable Maintenance Instructions, such emergency steps taken by the City's or the MTO's own forces, as applicable, shall not invalidate any DB Co warranties in respect of the Works.

- (d) If DB Co fails to carry out Warranty Work in accordance with Section 11.16(b), and in the time specified in Section 11.17(b) or subsequently agreed upon, without prejudice to any other right or remedy the City may have, the City and the MTO, as applicable, may perform such Warranty Work at the sole risk, cost and expense of DB Co and may draw down on the relevant Warranty Letter of Credit to fund or as reimbursement for such costs and expenses.
- (e) DB Co acknowledges and agrees that all rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in Schedule 15 – Output Specifications, apply to DB Co's performance of its obligations in accordance with Sections 11.16(b) and 11.17.
- (f) DB Co shall be solely responsible for obtaining access from MTO for the purpose of carrying out Warranty Work. DB Co acknowledges that such access to the New MTO Infrastructure may be subject to such limitations as may be imposed by MTO, and that DB Co may be required to obtain a Permit, Licence, Approval or Agreement to access the New MTO Infrastructure for the purpose of carrying out Warranty Work. If, after making commercially reasonable efforts and otherwise complying with its obligations pursuant to this Project Agreement, DB Co is unable to obtain access to the New MTO Infrastructure, DB Co shall refer the matter to the City, and if City is unable to facilitate access to the New MTO Infrastructure in a timely manner, DB Co shall be excused from its obligations to carry out such Warranty Work.
- (g) The warranties set out in Sections 11.16(b) and 11.17 shall not deprive the City or the MTO of any action, right or remedy otherwise available to the City or the MTO at law or in equity, and the periods referred to in this Section 11.17 shall not be construed as a limitation on the time in which the City or the MTO may pursue such other action, right or remedy.

- (h) Neither test results, nor selection or approval by the City or the City Representative of testing entities, nor any other thing in the Project Agreement shall have the effect of limiting or shortening or otherwise affecting in any way whatsoever the duration, effectiveness or content of any guarantee or warranty set forth in any other document or material forming part of the Project Agreement.
- (i) DB Co's aggregate maximum liability in respect of or relating to Warranty Work (including Remaining Works Warranty Work) shall be limited to the amount of the limitation on liability under the Performance Guarantee of Construction Contractor. This limitation on liability shall include, and be applicable to, (i) all costs incurred by or on behalf of the City or MTO to perform the Warranty Work, (ii) all liquidated damages payable by DB Co to the City pursuant to Section 11.17A, (iii) all Defect Rectification Costs and Direct Losses payable by DB Co to RTG under the Interface Agreement.

11.17A Liquidated Damages for Failure to Perform Warranty Work

- (a) The City shall provide Notice to DB Co of whether a Construction Defect is anticipated to be a Minor Construction Defect, Medium Construction Defect, Major Construction Defect or Critical Construction Defect, as soon as reasonably practicable after becoming aware of such Construction Defect, and shall thereafter notify DB Co as soon as reasonably practicable after becoming aware of any change in categorization of such Construction Defect.
- (b) Without prejudice to the City's other rights and remedies under Section 11.17, but subject to Section 11.17A(f), if DB Co has been provided with access to the System Infrastructure reasonably required to undertake Warranty Work in accordance with Section 11.17, but fails or refuses to perform Warranty Work required to rectify any Construction Defect in respect of the System Infrastructure within the reasonable time period required by the City in accordance with Section 11.17(b), or such time period set out in a Warranty Request in respect of such Construction Defect, as applicable, then DB Co shall:
 - (i) if the applicable Construction Defect is a Minor Construction Defect, pay to the City the sum of **\$[REDACTED]** per calendar day after the expiry of such time period until such Warranty Work is completed, as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co's failure or refusal to perform such Warranty Work within such time period;
 - (ii) if the applicable Construction Defect is a Medium Construction Defect, pay to the City the sum of **\$[REDACTED]** per calendar day after the expiry of such time period until such Warranty Work is completed, as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co's failure or refusal to perform such Warranty Work within such time period; or
 - (iii) if the applicable Construction Defect is a Major Construction Defect, pay to the City the sum of **\$[REDACTED]** per calendar day after the expiry of such time period until such Warranty Work is completed, as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co's failure or refusal to perform such Warranty Work within such time period;

provided that, except as otherwise set forth in Step 1.8(d) of the Warranty Protocol, in no event shall such liquidated damages commence to accrue until the later of (A) seven (7) calendar days

after DB Co's receipt of either (i) Notice from the City of such Construction Defect or (ii) the applicable Warranty Request under the Warranty Protocol, whichever is earlier or (B) the lapse of the applicable DB Co Response Period.

- (c) Without prejudice to the City's other rights and remedies under Section 11.17, but subject to Section 11.17A(f), if the applicable Construction Defect is a Critical Construction Defect, provided DB Co has been provided with access to the System Infrastructure reasonably required to undertake Warranty Work in accordance with Section 11.17, DB Co shall pay to the City the sum of **[\$[REDACTED]]** per calendar day for each day after receipt of Notice of such Critical Construction Defect or receipt of the applicable Warranty Request, as the case may be, until Warranty Work is completed, as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co's failure or refusal to promptly perform such Warranty Work; provided that, except as otherwise specified in Step 1.8(d) of the Warranty Protocol, in no event shall such liquidated damages commence to accrue until the later of (A) three (3) calendar days after DB Co's receipt of either (i) Notice from the City of such Construction Defect or (ii) the applicable Warranty Request under the Warranty Protocol, whichever is earlier, or (B) the lapse of the applicable DB Co Response Period.
- (d) Notwithstanding Section 11.17A(a), in the event such Warranty Work is undertaken by the City in accordance with 11.17(d), liquidated damages under section 11.17A(b) and (c) shall only accrue for that period of time in excess of the time period required by the City in accordance with Section 11.17(b) or set out in the applicable Warranty Request, as the case may be, until such Warranty Work is completed by the City or RTG. Where such Warranty Work is undertaken by RTG in accordance with the Warranty Protocol, liquidated damages shall only accrue for that period specified in Step 1.8(d) of the Warranty Protocol.
- (e) The Parties agree that the liquidated damages set out in this Section 11.17A are not a penalty but represent a genuine and reasonable pre-estimate of the damages that will be suffered by the City or any City Party related to DB Co's failure to timely perform Warranty Work in accordance with this Project Agreement, including, as applicable, the Warranty Protocol. DB Co further agrees that it is, and shall be, estopped from alleging that any liquidated damages set out in this Section 11.17A are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages were not incurred.
- (f) Subject to Section 11.17A(g) and subject to an aggregate maximum liability of DB Co for liquidated damages under this Section 11.17A equal to **[\$[REDACTED]]**, unless otherwise specified herein, liquidated damages that accrue under this Section 11.17A shall become due and payable from time to time upon the City giving Notice to DB Co. Any such Notice shall specify the amount of liquidated damages that have accrued and are payable by DB Co to the City as of the date of such Notice. If such liquidated damages are not paid by DB Co within 10 Business Days from the date of such Notice, the City may recover any such liquidated damages due by DB Co by setting off such amounts from any amounts due or owing by the City to DB Co hereunder, or by drawing down the corresponding amount from the applicable Warranty Letter of Credit, in each case as required by the City, acting in its discretion. Failure by the City to provide a Notice to DB Co under this Section 11.17A(f) shall not constitute a waiver of the City's right to claim, or otherwise release DB Co from liability for, all liquidated damages under this Section 11.17A at any time.
- (g) In the event that there is a Dispute concerning whether or not a defect constitutes a Construction Defect or the required time period for performance of the required Warranty Work, and such

Dispute is ongoing, the City shall not be entitled to payment of related liquidated damages pursuant to this Section 11.17A unless and until such Dispute is resolved in accordance with either the Dispute Resolution Procedure, or the procedure in Appendix 6 of the Interface Agreement, as applicable, and, if resolved in favour of the City, the provisions respecting liquidated damages contained in this Section 11.17A shall apply with retroactive effect, except that there shall be added to the amount payable by DB Co on account of liquidated damages, interest at the rate of [REDACTED] percent per annum from the date the liquidated damages were required to be paid in the absence of the Dispute to the date of payment.

- (h) Notwithstanding the forgoing provisions of this Section 11.17A, provided DB Co has complied with, and exercised all commercially reasonable efforts to enforce, the warranty provisions in the Nominated Signalling Subcontract, liquidated damages shall not accrue under this Section 11.17A for a period of delay in completion of Warranty Work to the extent such delay is attributable to a delay or failure of the Nominated Signalling Subcontractor in undertaking Warranty Work in respect of the Nominated Signalling Subcontractor Works pursuant to the Nominated Signalling Subcontract.

11.18 Warranty Letter of Credit

- (a) DB Co shall deliver, or cause to be delivered, to the City unconditional and irrevocable letters of credit from any one or more of the Schedule I Canadian chartered banks or any other financial institutions approved by the City in the City's sole and absolute discretion, in each case, whose current long-term issuer rating is at least "A" by Standard & Poor's and "A2" by Moody's Investor Services or an equivalent rating by another party acceptable to the City, in its sole and absolute discretion, in favour and for the direct and exclusive benefit of the City, in the form set out in Schedule 7B – Warranty Letter of Credit (each, a "**Warranty Letter of Credit**"), on or before the following dates:
 - (i) the East Substantial Completion Date, in respect of the East Warranty Work (the "**East Warranty Letter of Credit**"); and
 - (ii) the West Substantial Completion Date, in respect of the West Warranty Work (the "**West Warranty Letter of Credit**").

If no warranty claims are made pursuant to Sections 11.16 and 11.17 within the first year of the any Warranty Period, the value of the applicable Warranty Letter of Credit shall be reduced by [REDACTED]% for the remainder of the initial two year term of such Warranty Period. If a Warranty Period is extended in accordance with Section 11.17(a) in respect of Warranty Work, the value of the applicable Warranty Letter of Credit shall, for the duration of the extension beyond the initial two year term of such Warranty Period, be reduced to an amount equal to [REDACTED]% of the value of such Warranty Work.

- (b) Unless a Warranty Letter of Credit is drawn by the City in accordance with the provisions of this Project Agreement, the City shall release and deliver the,
 - (i) East Warranty Letter of Credit to DB Co on the day following the expiry of the East Warranty Period; and
 - (ii) West Warranty Letter of Credit to DB Co on the day following the expiry of the West Warranty Period,

each Warranty Period as may be extended pursuant to Section 11.17(a).

- (c) If an East Warranty Letter of Credit is drawn by the City, the City shall release and deliver the full amount of the East Warranty Letter of Credit, less,

- (i) the amount of any warranty claims then outstanding, if any; and
- (ii) the amount of claims previously satisfied by a draw by the City on the East Warranty Letter of Credit, if any,

on the day following the expiry of the East Warranty Period, and as it may be extended pursuant to Section 11.17(a).

- (d) If a West Warranty Letter of Credit is drawn by the City, the City shall release and deliver the full amount of the West Warranty Letter of Credit, less,

- (i) the amount of any warranty claims then outstanding, if any; and
- (ii) the amount of claims previously satisfied by a draw by the City on the West Warranty Letter of Credit, if any,

on the day following the expiry of the West Warranty Period, and as it may be extended pursuant to Section 11.17(a).

- (e) [Not used]

- (f) The City shall be entitled to draw on a Warranty Letter of Credit:

- (i) in accordance with Sections 11.17(d) and 1.5(b)(iv); and/or
- (ii) to satisfy any amounts that are due and have remained outstanding for 30 days by DB Co pursuant to the terms of this Project Agreement or the Interface Agreement.

- (g) The City may make multiple calls on the East Warranty Letter of Credit and West Warranty Letter of Credit.

- (h) DB Co shall continuously maintain, replace or renew a Warranty Letter of Credit (or shall cause the continuous maintenance, replacement or renewal of a Warranty Letter of Credit) until such Warranty Letter of Credit is released and delivered to DB Co pursuant to Section 11.18(b), (c), or (d), as the case may be, provided that for clarity, in the event of any draw on a Warranty Letter of Credit, DB Co shall not be required to replenish the Warranty Letter of Credit to the extent so drawn.

- (i) In the event that DB Co does not renew (or does not cause the renewal of) a Warranty Letter of Credit (a “**Non-Renewed Warranty Letter of Credit**”) and does not provide (or cause the provision of) proof of such renewal to the City before the date that is 20 calendar days before the Warranty Letter of Credit’s expiry date then, at any time during such 20 calendar day period and upon providing prior written Notice to DB Co, the City may draw upon the full amount of the Non-Renewed Warranty Letter of Credit and deposit the cash proceeds thereof in a segregated bank account selected by DB Co (provided that such bank account must be at a bank that meets

the thresholds described in Section 11.18(a)) and if DB Co does not promptly select such bank account then such bank account may be selected by the City in its absolute discretion, and such cash proceeds shall thereupon stand in place of the Non-Renewed Warranty Letter of Credit until DB Co delivers (or causes the delivery of) a replacement Warranty Letter of Credit to the City. All interest earned on such cash proceeds shall be for the benefit of DB Co. The City shall be entitled to withdraw such cash proceeds in the same manner that it is permitted to draw upon a Warranty Letter of Credit under Section 11.18(f). Upon the delivery of a replacement Warranty Letter of Credit by DB Co to the City, all remaining cash proceeds and all accrued interest thereon from such segregated bank account shall be returned to DB Co or as DB Co may direct within five Business Days after the delivery of such replacement Warranty Letter of Credit by DB Co to the City.

11.18A Remaining Works Letter of Credit

- (a) On or before the West Substantial Completion Date, DB Co shall deliver, or cause to be delivered, to the City an unconditional and irrevocable letter of credit from any one or more of the Schedule I Canadian chartered banks or any other financial institutions approved by the City in the City's sole and absolute discretion, in each case, whose current long-term issuer rating is at least "A" by Standard & Poor's and "A2" by Moody's Investor Services or an equivalent rating by another party acceptable to the City, in its sole and absolute discretion, in favour and for the direct and exclusive benefit of the City, in the form set out in Schedule 7C – Remaining Works Letter of Credit (the "**Remaining Works Letter of Credit**").
- (b) Unless the Remaining Works Letter of Credit is drawn by the City in accordance with the provisions of this Project Agreement, the City shall release and deliver the Remaining Works Letter of Credit to DB Co within five Business Days following the West Final Completion Date.
- (c) If the Remaining Works Letter of Credit is drawn by the City, the City shall release and deliver the full amount of the Remaining Works Letter of Credit, less, any amounts drawn by the City on the Remaining Works Letter of Credit, to DB Co within five Business Days following the West Final Completion Date.
- (d) In the event that the Remaining Works, other than in respect of any Remaining Works Minor Deficiencies, have not been completed by the West Scheduled Final Completion Date, the City may, upon the delivery of written notice to DB Co at any time following the West Scheduled Final Completion Date, engage others to perform the work necessary to complete the Remaining Works at the risk and cost of DB Co and the City may, at any time and from time to time, fund the cost of completing such work by drawing against the Remaining Works Letter of Credit.
- (e) If, by the time specified in 25.12B(a) DB Co has failed to complete and rectify any of the Remaining Works Minor Deficiencies specified in the Remaining Works Minor Deficiencies List, the City may, upon the delivery of written notice to DB Co at any time following such date, engage others to perform the work necessary to complete and rectify such Remaining Works Minor Deficiencies, at the risk and cost of DB Co and the City may, at any time and from time to time, fund the cost of completing such work by drawing against the Remaining Works Letter of Credit.
- (f) Following the West Substantial Completion Date, in the event that:

- (i) a claim for a lien is registered against the Lands, or against the City or the holdback under the CA relating to the performance of the Remaining Works, or
- (ii) the City receives any written notice of a lien under the CA arising in relation to the performance of the Remaining Works,

and, in each case, unless DB Co makes alternative arrangements to bond or otherwise secure the amount of such lien claim and the costs associated therewith satisfactory to the City, acting reasonably, the City shall be entitled to draw down from the Remaining Works Letter of Credit, an amount the City reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by the City in connection therewith, including such amount on account of costs of the lien claimant such that the City may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the CA, until such time as such claim has been dealt with in accordance with the applicable provisions of Section 17.3.

- (g) The City may make multiple calls on the Remaining Works Letter of Credit.
- (h) DB Co shall continuously maintain, replace or renew the Remaining Works Letter of Credit (or shall cause the continuous maintenance, replacement or renewal of the Remaining Works Letter of Credit) until the Remaining Works Letter of Credit is released and delivered to DB Co pursuant to Section 11.18A(b), provided that, for clarity, in the event of any draw on the Remaining Works Letter of Credit, DB Co shall not be required to replenish the Remaining Works Letter of Credit to the extent so drawn.
- (i) In the event that DB Co does not renew (or does not cause the renewal of) the Remaining Works Letter of Credit and does not provide (or cause the provision of) proof of such renewal to the City before the date that is 20 calendar days before the Remaining Works Letter of Credit's expiry date, then at any time during such 20 calendar day period and then at any time and upon providing prior written Notice to DB Co, the City may draw upon the full amount of the Remaining Works Letter of Credit and deposit the cash proceeds thereof in a segregated bank account selected by DB Co (provided that such bank account must be at a bank that meets the thresholds described in Section 11.18A(a) and if DB Co does not promptly select such bank account then such bank account may be selected by the City in its sole and absolute discretion) and such cash proceeds shall thereupon stand in place of the Remaining Works Letter of Credit until DB Co delivers (or causes the delivery of) a replacement Remaining Works Letter of Credit to the City. All interest earned on such cash proceeds shall be for the benefit of DB Co. The City shall be entitled to withdraw such cash proceeds in the same manner that it is permitted to draw upon the Remaining Works Letter of Credit under Section 11.18A(d). Upon the delivery of a replacement Remaining Works Letter of Credit by DB Co to the City, all remaining cash proceeds and all accrued interest thereon from such segregated bank account shall be returned to DB Co or as DB Co may direct within five Business Days after the delivery of such replacement Remaining Works Letter of Credit by DB Co to the City.

11.18B Intentionally Deleted

11.18C Intentionally Deleted

11.18D Return of Draw Amount

- (a) In the event that the City obtains funds (the "**Draw Amount**") as a result of the City's call on any Warranty Letter of Credit or Remaining Works Letter of Credit and it is subsequently determined pursuant to the Dispute Resolution Procedure that such call was in breach of this Project Agreement or the amount of such call was in excess of the amount that the City was entitled to draw under this Project Agreement, the City shall repay such Draw Amount or excess amount, as applicable, and the Direct Losses of DB Co resulting from such wrongful or excess draw, within five (5) Business Days of such final determination; provided that, such repayment shall be conditional upon (and take place concurrently with) the restoration of such Warranty Letter of Credit or Remaining Works Letter of Credit, as applicable (if and to the extent that the applicable Warranty Letter of Credit or Remaining Works Letter of Credit has not been released by such date in accordance with this Project Agreement) by a face amount equal to the Draw Amount or excess amount, as applicable.
- (b) Notwithstanding anything to the contrary contained in this Project Agreement, the City shall only be permitted to draw on any Letter of Credit to the extent that the City's or MTO's, as applicable, entitlement to perform any Warranty Work or the Construction Defect giving rise thereto is not the subject of ongoing Dispute.

11.19 Coordination and Minimization of Disruption and Interference

- (a) DB Co shall perform the Works so as to coordinate with,
 - (i) the operations of, and the performance of any services by, the City, any City Party, any Governmental Authority, any Other Contractor, any Railway Company, any Utility Company, MTO, any Transit System and any railway system, including the performance of the Governmental Activities and the Other Works;
 - (ii) the operations of, and the performance of any RTG Works, by RTG and any RTG Party, including in accordance with the Interface Agreement (and subject to any specific coordination arrangements agreed therein);
 - (iii) the construction of the interface, connection or inter-connection between the New City Infrastructure, the New MTO Infrastructure, and any existing transit systems, highway systems, railway systems, Transit Systems, railway networks and any other Ontario or City of Ottawa road or roadway.
- (b) DB Co acknowledges and agrees that,
 - (i) DB Co has familiarized itself with all operations and activities associated with the Lands, the Existing Infrastructure and the existing transit systems, highway systems and railway systems, including the Existing Confederation Line, to the extent pertinent to or affected by the Works, and will perform the Works in accordance with, and subject to,
 - (A) this Project Agreement, including all rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in Schedule 15 – Output Specifications;

- (B) the Traffic and Transit Management Plan and the Construction Access Management Plan; and
 - (C) the requirements of the City and the MTO,

in order to maintain normal operations and activities associated with the Lands, the Existing Infrastructure and the existing transit systems, highway systems and railway systems, including the Existing Confederation Line;
 - (ii) the carrying on of the City Activities during construction is a priority for the City, and DB Co has reviewed the Project Documents with respect to this; and
 - (iii) DB Co shall use all methods required to comply with the instructions set out in this Project Agreement during the performance of the Works, DB Co shall fully cooperate with the City in complying with such instructions during the performance of the Works. Any costs incurred by DB Co in complying with said instructions shall be part of the Guaranteed Price, except in circumstances where DB Co is otherwise entitled to additional compensation in accordance with this Project Agreement.
- (c) Except as explicitly permitted by the City or this Project Agreement, and subject to DB Co's compliance with all applicable Permits, Licences, Approvals and Agreements,
- (i) DB Co shall minimize disturbance to and interference with,
 - (A) the existing transit systems, highway systems, railway systems, and the Existing Infrastructure and Stage 1 Connection Infrastructure in accordance with this Project Agreement, including with respect to noise, dust control, access to the Lands and the particular requirements in respect of those portions of the Works which are to be carried out within the Existing Infrastructure or Stage 1 Connection Infrastructure and in respect of those portions of the Works where connections are being made to the Existing Infrastructure or Stage 1 Connection Infrastructure;
 - (B) the construction, operations or maintenance activities of the City, any Governmental Authority, any Other Contractor, any Railway Company, any Utility Company, MTO, RTG and RTG Parties in accordance with the Interface Agreement (and subject to any specific coordination arrangements agreed therein), any Transit System and any railway system, and with respect to any road or roadway, including the performance of the Governmental Activities, RTG Works and the Other Works;
 - (C) the convenience of the public in respect of, and the access of the public to and use of, any public or private roads or highways or other transportation infrastructure including the Existing Infrastructure (other than the New City Infrastructure and the New MTO Infrastructure), whether under the control or in the possession of the City or any other person, and DB Co shall minimize any lane or ramp closures or diversions, track closures or diversions and traffic diversions or restrictions.

- (d) To the extent that the Project necessitates interference, in any way, with the operation of the existing transit systems, existing highway systems, existing railway systems or Existing Infrastructure, including the imposition of any closures or detours on the existing highway systems, railway systems or Existing Infrastructure, DB Co shall use commercially reasonable efforts to cooperate with the City, Governmental Authorities, Other Contractors, Railway Companies, Utility Companies, MTO, RTG and RTG Parties in accordance with the Interface Agreement (and subject to any specific requirements therein), Transit Systems, railway systems and other relevant third parties to ensure the continued operation of the existing transit systems, highway systems, rail systems and Existing Infrastructure.
- (e) DB Co shall develop and implement protocols in furtherance of its obligations as set out in this Section 11.19 in accordance with the Traffic and Transit Management Plan, the Construction Access Management Plan and the Output Specifications.

11.20 Substitutions

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project Agreement by using the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name or description, the naming or identification of the item is intended to establish the type and the minimum function and quality required, and equipment, components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors shall not be substituted without the prior written consent of the City, in its sole discretion. Notwithstanding the foregoing, in the case of obsolescence of an item or in any other circumstances where the relevant prescribed item is unavailable through no fault of DB Co or any DB Co Party, to the extent the replacement item is more expensive to purchase or install than the prescribed item, or increases the costs of Works, or causes delay in the Works, such change shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event. To the extent the replacement item is less expensive to purchase or install than the prescribed item, or reduces the costs of Works, such change shall be addressed as a Variation.

11.21 Change in Standards

- (a) Where this Project Agreement requires DB Co to comply with a technical standard in respect of the design and construction of the Utility Works, New City Infrastructure and the New MTO Infrastructure, and that standard has changed between the date of this Project Agreement and the date that such compliance is required, then DB Co shall give Notice to the City of such change. If, after such Notice, the City requires compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. If the City does not require compliance with the changed standard, then DB Co shall continue to comply with the standard applicable as of the date of this Project Agreement, without a Variation therefor. This Section 11.21 shall not apply where a change in a technical standard is also a Change in Law, in which case Article 30 shall govern.

11.22 Subcontractors and Suppliers

- (a) DB Co shall preserve and protect the rights of the Parties under this Project Agreement with respect to the works to be performed under Subcontract, and shall:
 - (i) enter into Subcontracts or written agreements with DB Co Parties to require them to perform their work as provided in the Project Agreement;
 - (ii) incorporate the relevant terms and conditions of the Project Agreement into all contracts or written agreements with DB Co Parties; and
 - (iii) be as fully responsible to the City for acts and omissions of the DB Co Parties as for acts and omissions of persons directly employed by DB Co.
- (b) Attached in Part 1 of Schedule 8 – DB Co Parties is a list of all DB Co Parties that DB Co has engaged or caused to be engaged for the performance of the Work as of the date of execution of this Project Agreement. DB Co agrees to update such list (and including, for greater clarity, Part 2 of Schedule 8) from time to time as additional DB Co Parties are engaged. Any of these named DB Co Parties listed by DB Co may be changed by DB Co upon prior Notice to (but without the approval of) the City Representative, provided however, that if the City Representative reasonably objects to any change to a Prequalified Subcontractor (other than the Nominated Signaling Subcontractor) that is a DB Co Party, then DB Co shall select an alternative replacement Prequalified Subcontractor to which the City Representative does not reasonably object.
- (c) DB Co hereby agrees to contractually obligate the Construction Contractor to enter into the Construction Contractor's Direct Agreement and, subject to Section 11.22(d), to cause the Construction Contractor to cause each of the other DB Co Parties, including Suppliers leasing any construction machinery and equipment, to enter into the Subcontractor's Direct Agreement, to evidence, among other things, that the City shall have the right to cure any default by the Construction Contractor under the Subcontract.
- (d) With the exception of the Subcontracts specifically listed in item 1 in Part 2 of Schedule 8 – DB Co Parties, none of DB Co, the Construction Contractor or the applicable DB Co Party are obliged to enter into a Subcontractor's Direct Agreement in respect of Subcontracts having a total estimated cost of \$[REDACTED] or less.
- (e) Subject to Section 11.22(d), DB Co agrees to deliver to the City the Subcontractor's Direct Agreements by the applicable due dates set out in Part 2 of Schedule 8 – DB Co Parties. If, following the date that [REDACTED]% (and issued for construction) Construction Document Submittals are submitted to the City in accordance with Schedule 10 – Review Procedure, DB Co is required to enter into any additional Subcontractor's Direct Agreement pursuant to this Section 11.22, DB Co shall deliver such Subcontractor's Direct Agreements to the City within 30 days after execution.

11.23 Apprenticeship Plan and Program

- (a) No later than six months after Financial Close, DB Co shall provide a plan setting out DB Co's Project-specific approach to maximizing apprenticeship opportunities on the Project (the

“**Apprenticeship Plan**”) for review and approval by the City. The Apprenticeship Plan shall include,

- (i) specific objectives for apprenticeship opportunities for the Project on a trade-by-trade basis;
 - (ii) apprenticeship opportunities for each trade required on the Project;
 - (iii) a confirmation that apprenticeships will be registered with the Ministry of Advanced Education and Skills Development and the Ontario College of Trades, as applicable;
 - (iv) a program to ensure the required supply of apprentices to meet DB Co’s Apprenticeship Plan targets and requirements; and
 - (v) a program to support apprentices on the Project, to complete their apprenticeships during the Project Term and, for those whose apprenticeships are not complete by the end of the Project Term a program to support apprentices to complete their apprenticeships after the end of the Project Term.
- (b) DB Co shall implement the approved Apprenticeship Plan.
- (c) DB Co shall provide an annual report to the City on the implementation of the Apprenticeship Plan which report shall include,
- (i) statistics on the number of apprentices involved in the Project relative to the number of journeypersons, for each month of the Project; and
 - (ii) detailed information setting out DB Co’s progress toward achieving the objectives set out in the Apprenticeship Plan, including an identification of barriers that prevented DB Co from achieving its objectives.
- (d) The City may require DB Co to amend its Apprenticeship Plan if, in its opinion, acting reasonably, DB Co is failing to maximize apprenticeship opportunities on the Project pursuant to the then current Apprenticeship Plan.
- (e) The City may, in its sole discretion, release DB Co’s Apprenticeship Plan to the public. DB Co’s Apprenticeship Plan shall not be Confidential Information.

11.24 Procurement Monitoring and Implementation Plan

- (a) DB Co shall implement the procurement monitoring and implementation plan (the “**Procurement Monitoring and Implementation Plan**”) attached as Schedule 19 – Procurement Monitoring and Implementation Plan to this Project Agreement.
- (b) A director of DB Co shall submit, annually, on each anniversary of Commercial Close, a completed and executed declaration in the form attached as Appendix 1 to Schedule 19 – Procurement Monitoring and Implementation Plan that DB Co has made the proper inquiries and has determined that the requirements of the Procurement Monitoring and Implementation Plan have been complied with by DB Co and its Subcontractors in the immediately previous year.

11.25 Health and Safety Certification

- (a) DB Co shall, at its own cost and risk, at all times during the performance of the Works cause a COR-Qualified Construction DB Co Party or COR-Certified Construction DB Co Party, as the case may be, to:
 - (i) to the extent a COR-Qualified Construction DB Co Party has not obtained its COR Certification prior to Financial Close,
 - (A) use best efforts to obtain its COR Certification no later than 18 months following Financial Close. In the event that the City is satisfied, in its sole discretion, that the COR-Qualified Construction DB Co Party has used best efforts to obtain its COR Certification in accordance with this Section 11.25 and the COR-Qualified Construction DB Co Party has not obtained COR Certification by the end of such 18 month period, then the City shall establish a time period during which the COR-Qualified Construction DB Co Party shall obtain its COR Certification, which time period shall not be less than 30 days; and
 - (B) maintain in good standing and, as applicable, renew its ISO 45001 Accreditation or OHSAS 18001 Accreditation until such time as the COR-Qualified Construction DB Co Party has obtained its COR Certification, and
 - (ii) once the COR-Qualified Construction DB Co Party is certified (thereafter referred to as a “**COR-Certified Construction DB Co Party**”), maintain in good standing, and, as applicable, renew its COR Certification; and
 - (iii) comply with all requirements of its ISO 45001 Accreditation or OHSAS 18001 Accreditation (if a COR-Qualified Construction DB Co Party) or COR Certification (if a COR-Certified Construction DB Co Party), in accordance with its terms.
- (b) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Works:
 - (i) a COR-Qualified Construction DB Co Party fails to obtain its COR Certification in accordance with this Project Agreement and the City determines that the failure to obtain the COR Certification is as a result of such COR-Qualified Construction DB Co Party not using best efforts to obtain such certification and the City delivers a Notice to DB Co indicating that a COR-Qualified Construction DB Co Party has failed to obtain its COR Certification in accordance with this Project Agreement;
 - (ii) a COR-Qualified Construction DB Co Party fails to maintain its ISO 45001 Accreditation or OHSAS 18001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement;
 - (iii) a COR-Certified Construction DB Co Party fails to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement,(each a “**H&S Certification Default Event**”);

- (iv) the City delivers a Notice to DB Co indicating that the City is of the opinion that a COR-Qualified Construction DB Co Party will fail to maintain its ISO 45001 Accreditation or OHSAS 18001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
- (v) the City delivers a Notice to DB Co indicating that the City is of the opinion that a COR-Certified Construction DB Co Party will fail to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement,

DB Co shall:

- (vi) immediately upon the occurrence of a H&S Certification Default Event, notify the City that a H&S Certification Default Event has occurred, and:
 - (A) produce and deliver to the City a report identifying the reasons for the failure to obtain or maintain in good standing the COR Certification, ISO 45001 Accreditation or OHSAS 18001 Accreditation, as the case may be;
 - (B) produce and deliver to the City a plan showing the steps that are to be taken to have the COR Certification, ISO 45001 Accreditation or OHSAS 18001 Accreditation, as the case may be, obtained or reinstated in good standing within a period of not more than 30 days (the “**H&S Certification Reinstatement Plan**”), which H&S Certification Reinstatement Plan shall be subject to review and approval by the City and, to the extent the City requires any amendments or revisions to be made to the H&S Certification Reinstatement Plan, DB Co shall take, and shall cause the COR-Qualified Construction DB Co Party or the COR-Certified Construction DB Co Party, as the case may be, to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to the City an amended H&S Certification Reinstatement Plan not more than five Business Days from the date on which such request is made by the City;
 - (C) no later than five Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.2; and
 - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 15.2(c), if required; or
- (vii) within five Business Days after receipt of the Notice from the City under Section 11.25(b)(iv) or 11.25(b)(v):
 - (A) produce and deliver to the City Representative a report identifying the manner in which the COR Certification, ISO 45001 Accreditation or OHSAS 18001 Accreditation, as the case may be, shall be maintained in good standing or obtained, as applicable;
 - (B) produce and deliver to the City Representative a plan showing the steps that are to be taken to ensure that the COR Certification, ISO 45001 Accreditation or OHSAS 18001 Accreditation, as the case may be, will be

maintained in good standing without interruption (the “**H&S Certification Maintenance Plan**”), which H&S Certification Maintenance Plan shall be subject to review and approval by the City and, to the extent the City requires any amendments or revisions to be made to the H&S Certification Maintenance Plan, DB Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to the City an amended and H&S Certification Maintenance Plan not more than five Business Days from the date on which such request is made by the City;

- (C) arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.2, and
- (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 15.2(c), if required.

11.26 Demolition Requirements

- (a) Without limiting DB Co’s obligation to perform the Works at all times in accordance with Applicable Law, in respect of any Demolition, DB Co shall, and shall cause each applicable DB Co Party that is performing any part of the Demolition to, at such person’s own cost and risk and at all times during the performance of the Works:
 - (i) conduct all work in connection with any Demolition at all times in compliance with section 3 of the Performance Standards Regulation and the Building Code;
 - (ii) ensure that all DB Co Parties having responsibility for the supervision of any such Demolition are qualified as either a professional engineer, limited license holder or provisional license holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a “**Demolition Supervisor**”);
 - (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and
 - (iv) in respect of any Complex Structure Demolition to be conducted by DB Co or any DB Co Party:
 - (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include, without limitation, a detailed risk assessment and risk mitigation plan assessing all apparent or inferable risks that might be associated with the Demolition, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the “**Demolition Specifications**”);
 - (B) at all times when a Complex Structure Demolition is being performed that the Demolition Specifications, Demolition work plans and Load-Path Diagram, be present and available at the Site at which such Complex Structure Demolition is being performed; and

- (C) ensure at all times when a Complex Structure Demolition is being performed that a Demolition Supervisor will be on the Site at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition,

(collectively the “**Demolition Requirements**”).

- (b) If at any time while any Demolition is being performed pursuant to this Project Agreement, DB Co or any DB Co Party that is performing any part of any Demolition receives Notice from the City or any City Party or Governmental Authority that the Demolition is being conducted in a manner that is either not in compliance with the Demolition Requirements or not otherwise in accordance with this Project Agreement (such event referred to as a “**Demolition Default Event**”), DB Co shall and shall cause any applicable DB Co Party to:
 - (i) be required immediately upon the occurrence of a Demolition Default Event, to notify the City that a Demolition Default Event has occurred, unless the City was the person that provided Notice of the Demolition Default Event;
 - (ii) cease all work in respect of such Demolition; and
 - (iii) within five Business Days after receipt of a Notice of a Demolition Default Event produce and deliver to the City Representative:
 - (A) a report identifying the reasons for the occurrence of the Demolition Default Event; and
 - (B) a Demolition Plan showing the steps that are to be taken to rectify the Demolition Default Event within a period of not more than 30 days from the occurrence of the Demolition Default Event, which Demolition Plan shall be subject to review and approval by the City and, to the extent the City requires any amendments or revisions to be made to such Demolition Plan, DB Co and the applicable DB Co Parties shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to the City an amended and revised Demolition Plan not more than five Business Days from the date on which such request is made by the City.
- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
 - (i) the City is satisfied that DB Co or the applicable DB Co Party has taken all necessary steps to remediate such Demolition Default Event in accordance with Demolition Plan; and
 - (ii) the City has received a report, in form and substance satisfactory to the City, prepared by a professional engineer that the Demolition Default Event has been remediated and the Site has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan.

- (d) For clarity, DB Co shall not be eligible for a Delay Event or a Compensation Event in connection with a Demolition Default Event or the recommencement of a Demolition pursuant to Section 11.26(c).

11.27 New Municipal Infrastructure Works

- (a) DB Co shall achieve all New Municipal Infrastructure Works Acceptance by the Scheduled West Substantial Completion Date.
- (b) The City Engineer shall (i) receive and monitor all drawings, specifications, plans and documents related to the design and development of the New Municipal Infrastructure Works; (ii) receive and monitor all progress reports as necessary for the City Engineer to be in a position to confirm progress and extent of completion of the New Municipal Infrastructure Works; (iii) review and monitor the tests described in Schedule 15 – Output Specifications in respect of the New Municipal Infrastructure Works; (iv) prior to any certification and/or acceptance of New Municipal Infrastructure Works, consider the views and comments of both DB Co and the City in relation to the satisfaction of the conditions for such certification and/or acceptance; (v) conduct inspections and reviews of the New Municipal Infrastructure Works as necessary for the City Engineer to be satisfied that the New Municipal Infrastructure Works are proceeding in accordance with the requirements of the Project Agreement; (vi) review relevant documentation, including the Design Development Submittals relating to New Municipal Infrastructure Works, certificates and approvals, Permits, Licences, Approvals, and Agreements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules, in each case, relating to New Municipal Infrastructure Works provided to the City Engineer pursuant to this Project Agreement and within the timeframes contemplated for such review within Schedule 10 – Review Procedure; and (vii) provide all other services set forth in Schedule 15 – Output Specifications as it relates to the New Municipal Infrastructure Works, in each case, for purposes of enabling the City Engineer to confirm satisfaction of the conditions for issuance of the New Municipal Infrastructure Component Acceptance Certificate for each New Municipal Infrastructure Component and the Final New Municipal Infrastructure Works Acceptance Certificate in relation to all of the New Municipal Infrastructure.
- (c) DB Co shall deliver a notice (a “**New Municipal Infrastructure Works Component Countdown Notice**”) to the City and the City Engineer specifying the date on which DB Co anticipates that New Municipal Infrastructure Component Acceptance will be achieved in respect of such New Municipal Infrastructure Component (the “**Anticipated New Municipal Infrastructure Component Acceptance Date**”). The New Municipal Infrastructure Works Component Countdown Notice shall be delivered not less than 90 days prior to the Anticipated New Municipal Infrastructure Component Acceptance Date. DB Co shall give the City Engineer and the City Representative at least 10 Business Days’ notice prior to the date upon which DB Co anticipates all requirements for New Municipal Infrastructure Component Acceptance shall be satisfied.
- (d) DB Co shall give the City Engineer and the City Representative notice (the “**New Municipal Infrastructure Component Acceptance Notice**”) upon the satisfaction of all requirements of the New Municipal Infrastructure Component Acceptance, together with DB Co’s opinion as to whether the conditions for issuance of the New Municipal Infrastructure Component Acceptance Certificate have been satisfied, and each of the following:

- (i) to the extent transferable and without prejudice to the City's rights pursuant to Section 41 and Schedule 24 – Intellectual Property, all copyright licences for computer programs, or licences to use the same, used in connection with the applicable New Municipal Infrastructure Components together with all technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, leases, licence and subletting data and contracts, asset conditions data, standard operating procedures processes and manuals, and all other information related to the New Municipal Infrastructure Works in respect of the applicable New Municipal Infrastructure Component accumulated up until the New Municipal Infrastructure Component Acceptance Date, in each case, in electronic format acceptable to the City, acting reasonably, where it exists in electronic format, and in original format, when not in electronic format;
- (ii) the most recent Record Drawings relating to the New Municipal Infrastructure Works in the format that the City, acting reasonably, considers most appropriate at the time;
- (iii) copies of all test results performed and test reports prepared in accordance with Schedule 15, together with all DB Co Permits, Licences, Approvals and Agreements obtained and/or entered into in connection with the New Municipal Infrastructure Works;
- (iv) all Project Data and Intellectual Property relating to the design, construction and completion of the New Municipal Infrastructure Component; and
- (v) all information, reports, documents, records and the like referred to in the Project Agreement as it relates to New Municipal Infrastructure Works including as referred to in Schedule 26 – Record Provisions, in each case as it relates to New Municipal Infrastructure and New Municipal Infrastructure Works only,

(collectively, the “**New Municipal Infrastructure Component Works Requirements**”).

Within 10 Business Days after receipt of a New Municipal Infrastructure Component Acceptance Notice the City Engineer shall determine whether the conditions for issuance of the New Municipal Infrastructure Component Acceptance Certificate have been satisfied and to issue to the City and DB Co either:

- (A) the New Municipal Infrastructure Component Acceptance Certificate, setting out in such certificate the New Municipal Infrastructure Component Acceptance Date; or
 - (B) a report detailing the matters that the City Engineer considers are required to be performed by DB Co to satisfy the conditions for issuance of the New Municipal Infrastructure Component Acceptance Certificate.
- (e) Where the City Engineer has issued a report in accordance with Section 11.27(d)(v)(B) above, DB Co shall, within 5 Business Days after receipt of such report, provide the City Engineer and the City Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;

- (ii) the schedule for completion of all such rectification actions; and
- (iii) any additional tests that need to be undertaken in respect of the New Municipal Infrastructure Works as a result of the rectification actions,

and DB Co shall perform all such additional rectification actions and testing in a timely manner. Upon completion thereof, DB Co may give a further New Municipal Infrastructure Component Acceptance Notice and Section 11.27(c) to (e) inclusive shall be repeated until the New Municipal Infrastructure Component Acceptance Certificate has been issued.

- (f) On each New Municipal Infrastructure Component Acceptance Date in respect of each New Municipal Infrastructure Component:
 - (i) DB Co shall cooperate fully with the City and any persons providing services on or at the New Municipal Infrastructure Components in order to avoid or mitigate, insofar as reasonably practicable, any inconvenience or any risk to the health and safety of any person at, on or under the Lands on which the New Municipal Infrastructure Works are or were performed, including those areas where any warranty work is or has been performed;
 - (ii) insofar as title to the New Municipal Infrastructure Components shall not have already passed to the City pursuant to Section 45.1, DB Co shall transfer to, and there shall vest in the City, free from all Encumbrances (other than the Encumbrances caused or consented to by the City), the New Municipal Infrastructure Components;
 - (iii) DB Co shall use commercially reasonable efforts to assign, or otherwise transfer, to the City, free from all Encumbrances (other than any Encumbrances caused or consented to by the City), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by DB Co under this Project Agreement which is included in the New Municipal Infrastructure Components; and
 - (iv) subject to Section 41 and Schedule 24 - Intellectual Property, all information obtained by DB Co in connection with the New Municipal Infrastructure Works relating to the applicable New Municipal Infrastructure Components, including Record Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, lease, licence and subletting data and contracts, asset conditions data, standard operating procedure, processes and manuals, and all other information directly related to the New Municipal Infrastructure Works relating to the applicable New Municipal Infrastructure Component accumulated over the course of the Project Term shall be the property of the City.
- (g) Subject to the warranty obligations described herein, the issuance by the City Engineer in accordance with Section 11.27(d) of the New Municipal Infrastructure Component Acceptance Certificate in respect of any New Municipal Infrastructure Component shall result in the responsibility for traffic management, maintenance, repair of the New Municipal Infrastructure Component described in such New Municipal Infrastructure Component Acceptance Certificate reverting back to the City.

- (h) After New Municipal Infrastructure Component Acceptance Certificates for all New Municipal Infrastructure Components have been delivered by the City Engineer to DB Co, DB Co shall deliver a notice to the City Engineer requesting delivery of the Final New Municipal Infrastructure Works Acceptance Certificate. Upon satisfaction of all conditions to complete the New Municipal Infrastructure Works and achievement of New Municipal Infrastructure Works Acceptance, the City Engineer shall deliver to DB Co the Final New Municipal Infrastructure Works Acceptance Certificate.
- (i) DB Co shall deliver to the City and the City Engineer the following, in each case, in form and substance satisfactory to the City and the City Engineer, acting reasonably, in order to be eligible to receive the Final New Municipal Infrastructure Works Acceptance Certificate one complete set of the New Municipal Infrastructure Component Works Requirements divided up in separate packages for each New Municipal Infrastructure Component (i) showing all alterations made to the New Municipal Infrastructure Works since the New Municipal Infrastructure Component Acceptance Date in respect of each New Municipal Infrastructure Component and (ii) including updates and additions to any of the New Municipal Infrastructure Works Requirements since the New Municipal Infrastructure Component Acceptance Date (the “**Final New Municipal Infrastructure Works Requirements**”).

11.28 Works, Goods, Equipment, Consumables and Materials

- (a) Without expanding its obligations under Section 11.16, DB Co shall cause the goods, equipment, consumables and materials used or supplied by it or any contractor or Subcontractor in connection with the Works to be:
 - (i) of good quality, fit for their intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice;
 - (ii) of the type specified in the Output Specifications, if applicable; and
 - (iii) in compliance with all Applicable Law,and shall, as soon as practicable after receiving a request from the City Representative, supply to the City Representative evidence to demonstrate its compliance with this Section 11.28(a).
- (b) DB Co shall cause sufficient stocks of goods, equipment, consumables and materials to be held in compliance with its obligations under this Project Agreement.

11.29 Utility Works – Cash Allowance

- (a) DB Co shall perform and complete, the DB Co Utility Works, and shall procure and coordinate the performance and completion of the Utility Company Self-Performed Works by the applicable Utility Company pursuant to Utility Agreements:
 - (i) so as to satisfy the Output Specifications;
 - (ii) in accordance with the Works Schedule; and
 - (iii) in accordance with the other terms and conditions of this Project Agreement.

- (b) DB Co shall complete or cause the completion of the Utility Works, comprising part of, or required for:
 - (i) the East Works, as a precondition to achieving East Final Completion;
 - (ii) the West Works other than Highway Works, as a precondition to achieving West Final Completion;
 - (iii) the Highway Works, as a precondition to achieving the applicable Handover; and
 - (iv) the Remaining Works, as a precondition to achieving West Final Completion.
- (c) DB Co shall be solely responsible for coordinating the Utility Works with its activities in respect of the Project Operations and shall not be entitled to an extension of time or additional compensation in respect of the remainder of the Works as a result of the Utility Works or any matter relating thereto, except as provided for in this Section 11.29, Section 18.6, Section 32.1(a)(xxiv) and Section 33.6.
- (d) The DB Co Utility Works shall be reviewed, certified, financed and paid for as part of Earned Value in accordance with Schedule 21 – Construction Period Payments. The Utility Company Self-Performed Works shall be reviewed, certified, financed and paid for in accordance with this Section 11.29. DB Co shall not be required to obtain financing for the costs of the Utility Company Self-Performed Works.
- (e) Prior to entering into a Utility Agreement for the performance of Utility Company Self-Performed Work, DB Co shall submit to the City Representative a draft of such agreement setting out the scope and pricing proposed by the Utility Company for the performance of the Utility Company Self-Performed Work for review by the City. The City may, in conjunction with DB Co, for a period not to exceed 10 Business Days from receipt of the draft agreement, engage with the Utility Company to negotiate pricing for inclusion in the Utility Agreement based upon preferential pricing arrangements which the City may have with the applicable Utility Company and may also raise comments on proposed scope which DB Co shall consider acting reasonably and both Parties may seek to negotiate with the Utility Company. The City shall notify DB Co by the end of such 10 Business Day period of the results of such price discussions and the draft Utility Agreement will be updated for (i) any pricing amendments mutually agreed by the Utility Company and the City and (ii) any scope amendments mutually agreed by the Parties and the Utility Company. DB Co shall enter into the updated Utility Agreement. The City will only pay the Utility Company Works Cash Allowance and Utility Works Fee in respect of Utility Agreements which have been approved by the City in accordance with this Section 11.29(e).
- (f) The estimated cost of the Utility Company Self-Performed Works is **\$(REDACTED)** (the “**Utility Company Works Cash Allowance**”) plus applicable HST, and shall be paid for by the City on a monthly progress basis as the Utility Company Self-Performed Works are progressed and invoiced by the applicable Utility Company to DB Co. In the event that the actual costs of the Utility Company Self-Performed Works as evidenced by invoices rendered by the applicable Utility Company exceeds the estimated Utility Company Works Cash Allowance for any cause other than the negligence, default or willful misconduct of DB Co or any DB Co Party, the City shall pay such additional cost, plus applicable HST and the applicable Utility Works Fee applicable to such additional cost.

- (g) The City shall also pay DB Co a fee of **[REDACTED]**% of the Utility Works Cost (the “**Utility Works Fee**”), plus applicable HST, for the management, coordination and administration of the completion of the Utility Company Self-Performed Works.
- (h) DB Co may, on a monthly basis, provide to the City Representative and the Independent Certifier a request for payment (each, a “**Request for Utility Works Payment**”) that includes (i) an itemized breakdown of the applicable Utility Company Self-Performed Works invoiced in the previous month by a Utility Company, (ii) the Utility Works Fee applicable to the costs of the Utility Company Self-Performed Works included in such invoice, and (iii) applicable HST in respect of the amounts specified in (i) and (ii) above. Such Request for Utility Works Payment may be delivered concurrently with an application for progress payments on account of Earned Value achieved in respect of DB Co Utility Works in accordance with Schedule 21 – Construction Period Payments, but shall be presented separately for processing and payment by the City.
- (i) DB Co shall include with each Request for Utility Works Payment the certification of the Independent Certifier that the relevant Utility Company Self-Performed Works described in such Request for Utility Works Payment is eligible for payment by the City in accordance with this Section 11.29.
- (j) DB Co shall include with each Request for Utility Works Payment such additional supporting documentation as the City Representative may reasonably require in connection with the claimed base progress payments, the estimated cost to complete the Utility Company Self-Performed Works, any cumulative projected variance from the estimated Utility Company Works Cash Allowance and any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to DB Co in connection with the Utility Company Self-Performed Works. Each Request for Utility Works Payment submitted to the City shall be in a form stipulated by the City, acting reasonably, and shall support an “open-book” pricing approach for the completion of the Utility Company Self-Performed Works.
- (k) Within 10 Business Days of receipt of a Request for Utility Works Payment, the City shall, in consultation with the Independent Certifier, advise DB Co, in writing, whether or not it agrees with the particulars set out in the Request for Utility Works Payment. The City shall only be permitted to withhold its approval if the Independent Certifier determines that the Request for Utility Works Payment does not contain the information that the Independent Certifier requires, acting reasonably, to discharge their obligations under this Section 11.29. If the Independent Certifier withholds its approval pursuant to this Section 11.29(k) and subsequently receives the information that the Independent Certifier requires, acting reasonably, to discharge its obligations under this Section 11.29, it shall, within 10 Business Days of its receipt of such information, make payment of the amount set out in the aforementioned Request for Utility Works Payment. Any Disputes with respect to determinations made under this Section 11.29 shall be resolved in accordance with Schedule 27 – Dispute Resolution Procedure.
- (l) If the City approves in writing the payment of the amount set out in a Request for Utility Works Payment, it shall make payment of the amount set out in the approved Request for Utility Works Payment within 10 Business Days of receipt of the Request for Utility Works Payment.
- (m) DB Co acknowledges and agrees that:

- (i) all costs and expenses related to the administration and scheduling of the Utility Company Self-Performed Works, including, without limitation, the preparation of Requests for Utility Works Payment and any required reporting, shall be compensated solely by the Utility Works Fee; and,
- (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to DB Co or any Subcontractor in connection with the Utility Company Self-Performed Works shall be to the credit of the City.

11.30 Art Cash Allowance

- (a) DB Co shall procure and coordinate the performance and completion of the Art Cash Allowance Items:
 - (i) so as to satisfy the Output Specifications;
 - (ii) in accordance with the Works Schedule; and
 - (iii) in accordance with the other terms and conditions of this Project Agreement.
- (b) DB Co shall complete or cause the completion of the Art Cash Allowance Items, comprising part of, or required for:
 - (i) the East Works, as a precondition to achieving East Substantial Completion;
 - (ii) the West Works, as a precondition to achieving West Substantial Completion; and
 - (iii) the Remaining Works, as a precondition to achieving West Final Completion.
- (c) DB Co shall be solely responsible for coordinating the completion of the Art Cash Allowance Items with its activities in respect of the Project Operations and shall not be entitled to an extension of time or additional compensation in respect of the remainder of the Works as a result of the Art Cash Allowance Items or any matter relating thereto, except as provided for in this Section 11.30.
- (d) The Art Cash Allowance Items shall be reviewed, certified, financed and paid for in accordance with this Section 11.30. DB Co shall not be required to obtain financing for the costs of the Art Cash Allowance Items.
- (e) The City and DB Co shall comply with the processes and requirements set forth in Article 12 of Part 1 of Schedule 15-2 of the Output Specifications in respect of the procurement of Art Cash Allowance Items. The City will only pay the Art Cash Allowance in respect of Art Cash Allowance Items which have been procured in accordance with this Section 11.30 and the processes and requirements set forth in Article 12 of Part 1 of Schedule 15-2 of the Output Specifications.
- (f) The estimated cost of the Art Cash Allowance Items is \$[REDACTED] (the “**Art Cash Allowance**”) plus applicable HST, and shall be paid for by the City on a monthly progress basis as the Art Cash Allowance Items are progressed and invoiced to DB Co. In the event that the actual costs of the Art Cash Allowance Items exceed the estimated Art Cash Allowance for any

cause other than the negligence, default or willful misconduct of DB Co or any DB Co Party, the City shall pay such additional cost, plus applicable HST.

- (g) DB Co may, on a monthly basis, provide to the City Representative and the Independent Certifier a request for payment (each, a “**Request for Art Payment**”) that includes (i) an itemized breakdown of the applicable Art Cash Allowance Items invoiced to DB Co in the previous month, and (ii) applicable HST in respect of the amounts specified in (i) above. Such Request for Art Payment may be delivered concurrently with an application for progress payments on account of Earned Value achieved in accordance with Schedule 21 – Construction Period Payments, but shall be presented separately for processing and payment by the City.
- (h) DB Co shall include with each Request for Art Payment the certification of the Independent Certifier that the relevant Art Cash Allowance Items described in such Request for Art Payment is eligible for payment by the City in accordance with this Section 11.30.
- (i) DB Co shall include with each Request for Art Payment such additional supporting documentation as the City Representative may reasonably require in connection with the claimed base progress payments, the estimated cost to complete the Art Cash Allowance Items, any cumulative projected variance from the estimated Art Cash Allowance and any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to DB Co in connection with the Art Cash Allowance Items. Each Request for Art Payment submitted to the City shall be in a form stipulated by the City, acting reasonably, and shall support an “open-book” pricing approach for the completion of the Art Cash Allowance Items.
- (j) Within 10 Business Days of receipt of a Request for Art Payment, the City shall, in consultation with the Independent Certifier, advise DB Co, in writing, whether or not it agrees with the particulars set out in the Request for Art Payment. The City shall only be permitted to withhold its approval if either the Independent Certifier determines that the Request for Art Payment does not contain the information that the Independent Certifier requires, acting reasonably, to discharge their obligations under this Section 11.30. If the Independent Certifier withholds its approval pursuant to this Section 11.30(j) and subsequently receives the information that the Independent Certifier requires, acting reasonably, to discharge its obligations under this Section 11.30, it shall, within 10 Business Days of its receipt of such information, make payment of the amount set out in the aforementioned Request for Art Payment. Any Disputes with respect to determinations made under this Section 11.30 shall be resolved in accordance with Schedule 27 – Dispute Resolution Procedure.
- (k) If the City approves in writing the payment of the amount set out in a Request for Art Payment, it shall make payment of the amount set out in the approved Request for Art Payment within 10 Business Days of receipt of the Request for Art Payment.
- (l) DB Co acknowledges and agrees that:
 - (i) all costs and expenses related to the procurement, administration and scheduling of the Art Cash Allowance Items, including, without limitation, the preparation of Requests for Art Payment and any required reporting, shall be financed and paid for as part of Earned Value in accordance with Schedule 21 – Construction Period Payments; and

- (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to DB Co or any Subcontractor in connection with the Art Cash Allowance Items shall be to the credit of the City.

11.31 Nominated Signalling Subcontractor Cash Allowance

- (a) DB Co shall, in accordance with Nominated Signalling Subcontract, be responsible for the Nominated Signalling Subcontractor Works as part of the Works hereunder.
- (b) The Nominated Signalling Subcontractor Works shall be reviewed, certified, financed and paid for in accordance with this Section 11.31, and not as part of the Earned Value in accordance with Schedule 21 – Construction Period Payments. DB Co shall not be required to obtain financing for the costs of the Nominated Signalling Subcontractor Works.
- (c) The agreed cost of the Nominated Signalling Subcontractor Works to be reimbursed by the City is **\$(REDACTED)** as of Commercial Close (the “**Nominated Signalling Subcontractor Works Cash Allowance**”), plus applicable HST. The Nominated Signalling Subcontractor Works Cash Allowance shall only be amended pursuant to a Variation Confirmation or Variation Directive issued in accordance with Schedule 22 – Variation Procedure, or, subject to and in accordance with Section 33, upon the occurrence of a Compensation Event.
- (d) The City shall open the Nominated Signalling Subcontract Cash Allowance Account on or before Financial Close and shall manage the Nominated Signalling Subcontract Cash Allowance Account in accordance with this Section 11.31.
- (e) The cash flow process applicable to the Nominated Signalling Subcontract Cash Allowance Account will be as follows:
 - (i) the City will deposit the applicable portion of the Nominated Signalling Subcontractor Works Cash Allowance relating to each particular Nominated Signalling Subcontract Milestone into the Nominated Signalling Subcontract Cash Allowance Account five (5) Business Days prior to the date and in the amount set out in Schedule B of the Nominated Signalling Subcontract in respect of such applicable Nominated Signalling Subcontract Milestone (subject to adjustment in accordance with Section 11.31(c));
 - (ii) the City will hold and manage all monies in the Nominated Signalling Subcontract Cash Allowance Account; and
 - (iii) the Parties, together with the Construction Contractor and the Nominated Signalling Subcontractor shall review the operation of the Nominated Signalling Subcontract Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (f) Upon achievement of any Nominated Signalling Subcontract Milestone, DB Co shall provide to the City Representative and the Independent Certifier a request for payment (each, a “**Request for Nominated Signalling Subcontractor Works Payment**”) that includes (i) an itemized breakdown of the completed Nominated Signalling Subcontractor Works comprising the achieved Nominated Signalling Subcontract Milestone, and the invoice for services and materials rendered by the Nominated Signalling Subcontractor in respect thereof, and (ii) applicable HST. DB Co shall include with each Request for Nominated Signalling Subcontractor Works Payment such

additional supporting documentation as the Independent Certifier may reasonably require to confirm achievement of the applicable Nominated Signalling Subcontract Milestone. Such Request for Nominated Signalling Subcontractor Works Payment may be delivered concurrently with an application for progress payments on account of Earned Value in accordance with Schedule 21 – Construction Period Payments, but shall be presented separately for processing and payment by the City.

- (g) The Independent Certifier shall, within five (5) Business Days of receipt of a Request for Nominated Signalling Subcontractor Works Payment, advise DB Co, in writing, whether or not the applicable Nominated Signalling Subcontract Milestone as described in such Request for Nominated Signalling Subcontractor Works Payment is achieved and eligible for payment in accordance with this Section 11.31 and the payment terms of the Nominated Signalling Subcontract.
- (h) The Independent Certifier shall only be permitted to withhold its approval if the Independent Certifier determines that the Request for Nominated Signalling Subcontractor Works Payment does not contain the information that the Independent Certifier requires, acting reasonably, to discharge their obligations under this Section 11.31. If the Independent Certifier withholds its approval pursuant to this Section 11.31(h) and subsequently receives the information that the Independent Certifier requires, acting reasonably, to discharge its obligations under this Section 11.31, the Independent Certifier shall, within five (5) Business Days of its receipt of such information, provide to DB Co, in writing, the Independent Certifier's approval of the applicable Request for Nominated Signalling Subcontractor Works Payment. Any Disputes with respect to determinations made under this Section 11.31 shall be resolved in accordance with Schedule 27 – Dispute Resolution Procedure.
- (i) If the Independent Certifier approves the payment set out in a Request for Nominated Signalling Subcontractor Works Payment, the City shall release the applicable portion of the Nominated Signalling Subcontractor Works Cash Allowance from the Nominated Signalling Subcontract Cash Allowance Account for payment to the Nominated Signalling Subcontractor in accordance with the Nominated Signalling Subcontract.
- (j) In addition to payment of the Nominated Signalling Subcontractor Works Cash Allowance, the City shall also pay to DB Co:
 - (i) an amount equal to **[REDACTED]**% of the Nominated Signalling Subcontractor Works Gainshare, if any, plus applicable HST, on the East Substantial Completion Payment Date; and
 - (ii) an amount equal to **[REDACTED]**% of the Nominated Signalling Subcontractor Works Gainshare, if any, plus applicable HST, on the West Substantial Completion Payment Date.

11.32 Category 1 Utility Company Tracking System

- (a) DB Co shall, at its own cost and risk, provide to the City a system to track the progress made by the Category 1 Utility Companies in performing the activities described in the Utility Baseline Report. More specifically, such system shall:

- (i) be kept updated on a daily basis and be available to the City in real time during normal business hours through a web-based interface which would include functionality to provide automated email alerts to a customizable frequency and set of email addresses;
- (ii) be operational no later than the date upon which the first Category 1 Utility Company activity described in the Utility Baseline Report is commenced;
- (iii) include a feature that highlights to the City and the applicable Category 1 Utility Company each outstanding applicable activity described in the Utility Baseline Report when it reaches the following milestone triggers:
 - (A) **[REDACTED]**% of the number of Business Days designated for completion by the Category 1 Utility Company in the Utility Baseline Report for the applicable activity described in the Utility Baseline Report; and
 - (B) **[REDACTED]**% of the number of Business Days designated for completion by the Category 1 Utility Company in the Utility Baseline Report for the applicable activity described in the Utility Baseline Report.
- (b) DB Co shall provide written notice to the City Representative with respect to any outstanding Category 1 Utility Company activity described in the Utility Baseline Report when it reaches the milestone triggers outlined in Section 11.32(a)(iii)(A) and Section 11.32(a)(iii)(B).
- (c) With respect to any failure by a Category 1 Utility Company to perform the obligations set out in the Utility Baseline Report, DB Co shall not be entitled to the Delay Event or Compensation Amount pursuant to Section 32.1(a)(xxiv) unless the tracking system as described in this Section 11.32(a) is functional and available to the City, provides notice to the City of the milestones described in Section 11.32(a)(iii), and contains accurate information as to the progress made by the Category 1 Utility Companies in performing the activities described in the Utility Baseline Report at all material times.

12. REPRESENTATIVES

12.1 The City Representative

- (a) Subject to the limitations set out in Section 12.1(d), the City Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the City Representative and such other functions and powers of the City under this Project Agreement as the City may notify DB Co from time to time.
- (b) The City may, from time to time by written Notice to DB Co, change the City Representative. Such change shall have effect on the later of the date of delivery of such Notice and the date specified in such Notice.
- (c) During any period when no City Representative has been appointed, or when the City Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the City Representative's functions under this Project Agreement, the City shall perform or may, by written Notice to DB Co, promptly appoint an alternative City Representative to perform the functions which would otherwise be performed by the City Representative. Upon receipt of such written Notice, DB Co and the DB Co Representative shall be entitled to treat any act of such

alternative City Representative which is permitted by this Project Agreement as being authorized by the City, and DB Co and the DB Co Representative shall not be required to determine whether authority has in fact been given.

- (d) The City Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 12.1(d), unless otherwise notified in writing, DB Co and the DB Co Representative shall be entitled to treat any act of the City Representative which is explicitly authorized by this Project Agreement as being authorized by the City, and DB Co and the DB Co Representative shall not be required to determine whether authority has in fact been given.

12.2 The DB Co Representative

- (a) Subject to the limitations set out in Section 12.2(d), the DB Co Representative shall have full authority to act on behalf of DB Co for all purposes of this Project Agreement.
- (b) DB Co may change the DB Co Representative with the prior written consent of the City.
- (c) During any period when the DB Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the DB Co Representative's functions under this Project Agreement, DB Co shall perform or may, by written Notice to the City, promptly appoint an alternative DB Co Representative to perform the functions which would otherwise be performed by the DB Co Representative, provided that, DB Co must seek the City's consent in accordance with Section 12.2(b) if such alternative DB Co Representative is in place for more than 180 days. Upon receipt of such written Notice, the City and the City Representative shall be entitled to treat any act of such alternative DB Co Representative which is permitted by this Project Agreement as being authorized by DB Co, and the City and the City Representative shall not be required to determine whether authority has in fact been given.
- (d) The DB Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 12.2(d), unless otherwise notified in writing, the City and the City Representative shall be entitled to treat any act of the DB Co Representative which is explicitly authorized by this Project Agreement as being authorized by DB Co, and the City and the City Representative shall not be required to determine whether authority has in fact been given.

12.3 Communications to Representatives

- (a) At the time that a Party appoints or changes the appointment of the City Representative or the DB Co Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute Notices to the Party appointing such representative.

12.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 – Key Individuals. DB Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in Schedule 9 – Key Individuals (unless such Key Individuals are not available for reasons beyond the control of DB Co or a DB Co Party). DB Co or a DB Co Party shall not, for the duration of the Works, require or request any such person to be involved in any other project, if, in the reasonable opinion of the City such involvement would have a material adverse effect on the Works. If DB Co fails to comply with this Section 12.4(a), DB Co shall pay to the City the liquidated damages amount, if any, ascribed for such Key Individual in Schedule 9 – Key Individuals. For clarity, DB Co and the DB Co Parties' reasonable commercial efforts, in accordance with this Section 12.4(a), shall include the denial of promotions or relocations of a Key Individual, to the extent such denial is permitted by the Applicable Law. For the purposes of this Section 12.4(a), only the following reasons will be considered beyond the control of DB Co or a DB Co Party: death, short term disability, long term disability or any other reason in the opinion of the City, acting reasonably (DB Co shall provide to the City any further documentation as may be reasonably requested by the City to assess any reason beyond the control of DB Co).
- (b) Subject to DB Co's obligations to ensure that Key Individuals remain involved in the Works as set out in Section 12.4(a), if it becomes necessary for DB Co to replace any individual identified in Schedule 9 - Key Individuals, DB Co shall nominate a competent suitably qualified and experienced permanent replacement or replacements as soon as practicable and provide the City with relevant information on the proposed replacement and shall consult with the City before finalizing the appointment of such replacement. DB Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of the City, which consent shall not be withheld or delayed where DB Co is compliant with Sections 12.4(a) and 12.4(c) and the proposed replacement is suitably qualified and experienced. For those Key Individual's in respect of whom liquidated damages amounts are ascribed in Schedule 9 – Key Individuals, in the event DB Co fails to nominate a competent suitably qualified and experienced permanent replacement or replacements for a period of greater than 60 days from the date it became necessary for DB Co to replace any such Key Individual, DB Co shall pay to the City the liquidated damages ascribed in Schedule 9 – Key Individuals. The Parties agree that the liquidated damages set out in this Section 12.4(b) are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of DB Co's failure to provide the applicable Key Individual.
- (c) If the City determines, acting reasonably, that it is in the best interests of the City that any individual identified in Schedule 9 - Key Individuals be replaced, the City shall notify DB Co (including a detailed explanation of the reasons for such determination), and, within 60 days after receipt by DB Co of such Notice, DB Co shall provide the City with relevant information on the proposed replacement and shall consult with the City before finalizing the appointment of such replacement.

13. WORKS SCHEDULE AND WORKS REPORT

13.1 Completion of the Works

- (a) DB Co shall complete the Works in accordance with this Project Agreement and achieve:

- (i) East Substantial Completion by the East Scheduled Substantial Completion Date;
- (ii) East Final Completion by the East Scheduled Final Completion Date;
- (iii) West Substantial Completion by the West Scheduled Substantial Completion Date; and
- (iv) West Final Completion, including all Remaining Works, by the West Scheduled Final Completion Date.

13.2 The Works Schedule

- (a) From Financial Close until PBS-2 becomes the Current PBS, PBS-1 shall be deemed to be the Current PBS and, until such time, the following provisions of the Project Agreement applicable to the Current PBS shall be applicable to PBS-1: Sections 10.3(a)(i), 11.12(f)(ii), 11.12(f)(iii), 14.2(b), 14.2(d), and 26.2(a)(i) of the Project Agreement; Section 1.8(c) of Schedule 10 – Review Procedure; and Section 1.6(b)(vii) of Schedule 22 – Variation Procedure;
- (b) DB Co shall, in accordance with Schedule 12 – Works Scheduling Requirements, prepare and submit to the City and the Independent Certifier:
 - (i) within 180 days after Financial Close, PBS-2 and a schedule narrative in accordance with Section 2.2 of Schedule 12 - Works Scheduling Requirements indicating the differences between PBS-1 and PBS-2;
 - (ii) every month, within 10 Business Days after the end of each calendar month from Financial Close, the Monthly Progress Report and PBS Update in accordance with Schedule 33 – Works Reports;
 - (iii) after receipt of written request from the City, acting reasonably, a Micro-Schedule for any specific area in accordance with Schedule 12 – Works Scheduling Requirements, to be provided no later than the end of subsequent reporting period; and
 - (iv) Recovery Schedules, PBS Re-baselines, Short Duration Schedules, As-built Schedules and Informal Implementation Schedules in accordance with Schedule 12 – Works Scheduling Requirements,each meeting the requirements of Schedule 12 – Works Scheduling Requirements to the reasonable satisfaction of the City that support the completion of the Works in accordance with Section 13.1.
- (c) The City shall review all submissions in accordance with Schedule 12 – Works Scheduling Requirements and, as applicable, Schedule 10 – Review Procedure.
- (d) At the request of the City Representative, the DB Co Representative shall review the Works Schedules with the City Representative to explain to the City Representative's reasonable satisfaction:
 - (i) the activity logic and planning assumptions contained in the Works Schedule;
 - (ii) any proposed changes to the Critical Path of the Works; and

- (iii) any other matter raised by the City Representative concerning the Works Schedules.
- (e) DB Co and the City shall comply with the provisions of Schedule 12 – Works Scheduling Requirements.
- (f) Any comment or lack of comment by the City in regard to any Works Schedule indicating potential Delay Events pursuant to Section 32.2(a) of the Project Agreement shall not constitute any acknowledgement or acceptance of the potential delay.

14. WORKS COMMITTEE

14.1 Establishment

- (a) The Parties shall, within 30 days after Financial Close, establish a committee (the “**Works Committee**”) consisting of:
 - (i) six representatives appointed by the City from time to time, one of whom shall be the City Representative; and
 - (ii) five representatives appointed by DB Co, including the DB Co Representative, the Design Build Director, the Testing and Commissioning Coordinator, the Director of Communications and Stakeholder Engagement, and a representative of the Construction Contractor.
- (b) The Independent Certifier shall be entitled, but not required, to attend meetings as non-voting members of the Works Committee. Members of the Works Committee may invite, on prior Notice to all members, such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the Works Committee members.
- (c) The City Representative shall be the chairperson of the Works Committee.

14.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
 - (i) any design, construction and commissioning issues;
 - (ii) the Works Schedules;
 - (iii) any issues arising from reports or documents provided by DB Co or the Independent Certifier;
 - (iv) any quality assurance and safety and security issues, including any design, configuration control, interfacing, training, testing, operational impact and other matters creating or giving rise to a safety or security issue or otherwise requiring attention and oversight;

- (v) the Works Reports;
 - (vi) any special matters referred to the Works Committee by the City or DB Co;
 - (vii) any Proceeding At Risk Matters referred to the Works Committee in accordance with Section 14.6;
 - (viii) any community and media relations issues in accordance with Schedule 18 – Communication and Stakeholder Engagement Obligations;
 - (ix) any issues related to the Construction Access Management Plan and the Traffic and Transit Management Plan and any issues related to the rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in Schedule 15 – Output Specifications;
 - (x) monitoring the Testing & Commissioning Program; and
 - (xi) any other issues pertaining to the Works.
- (c) Subject to Section 14.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any change to a Key Work Milestones set out in the Works Schedules, any Scheduled Substantial Completion Date or any Scheduled Final Completion Date;
 - (iii) any Variation;
 - (iv) any change that may materially adversely affect DB Co’s ability to achieve the East Substantial Completion by the East Scheduled Substantial Completion Date or East Final Completion by the East Scheduled Final Completion Date;
 - (v) any change that may materially adversely affect DB Co’s ability to achieve the West Substantial Completion by the West Scheduled Substantial Completion Date or West Final Completion by the West Scheduled Final Completion Date; or
 - (vi) any matter with respect to which the City has a right of consent or in respect of which the City may exercise discretion pursuant to this Project Agreement.

14.3 Term of Works Committee

- (a) Unless otherwise agreed by the Parties, the Works Committee shall operate only until the later of the East Final Completion Date and West Final Completion Date (the “**Works Committee End Date**”).

14.4 Replacement of Committee Members

- (a) The City shall be entitled to replace any of its respective representatives on the Works Committee by written Notice to DB Co. The City will use commercially reasonable efforts to deliver prior written Notice of any such replacement to DB Co. DB Co may replace any of its representatives on the Works Committee with the prior written consent of the City.

14.5 Procedures and Practices

- (a) The members of the Works Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
 - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Works Committee End Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the DB Co Representatives or the City Representatives on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days' Notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such Notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet in the City of Ottawa, Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) Four representatives appointed by the City (one of whom shall be the City Representative) and three representatives appointed by DB Co (one of whom shall be the DB Co Representative) shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by

DB Co. DB Co shall circulate copies of such minutes within 5 Business Days after the holding of the meeting or the making of the recommendation or decision. Unless the City notifies DB Co within 5 Business Days after receipt of the minutes that the City disagrees with the contents of the minutes, DB Co and the City shall be deemed to have approved such minutes. DB Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by the City during regular business hours.

14.6 Proceeding At Risk

- (a) If at any time the City Representative has noted a Works Submittal as “CRITICAL COMMENT” in accordance with Schedule 10 – Review Procedure (a “**Proceeding At Risk Matter**”), then the City may issue to DB Co (with a copy to the Independent Certifier) a Notice (the “**Proceeding At Risk Notice**”) identifying the City’s reasons for issuing the Proceeding At Risk Notice and requesting DB Co to deliver any relevant Design Data and any other information reasonably required by the City from DB Co to review the Proceeding At Risk Matter.
- (b) Following the issuance of a Proceeding At Risk Notice, the City Representative and the DB Co Representative, together with the other members of the Works Committee, shall each promptly and diligently make a reasonable *bona fide* effort to resolve the Proceeding At Risk Matter. The Independent Certifier shall be required to attend all meetings and deliberations of the Works Committee at which the Proceeding At Risk Matter is considered, but shall not be entitled to participate in any decisions of the Works Committee.
- (c) Within 10 Business Days after receipt by DB Co of a Proceeding At Risk Notice, DB Co shall deliver a response to the City, each member of the Works Committee and the Independent Certifier, which shall include:
 - (i) the Design Data and any other information requested by the City in the Proceeding At Risk Notice;
 - (ii) DB Co’s opinion confirming agreement with, or disputing the opinion of, the City regarding the Proceeding At Risk Matter;
 - (iii) any additional Design Data and other information in support of DB Co’s opinion regarding the Proceeding At Risk Matter; and
 - (iv) DB Co’s proposal to rectify the Proceeding at Risk Matter.
- (d) Within five Business Days after receipt by the City of the response from DB Co pursuant to Section 14.6(c), the City shall notify DB Co if the City requires any additional information from DB Co. DB Co shall provide such additional information to the City and each member of the Works Committee and the Independent Certifier within 5 Business Days after receipt of such Notice.
- (e) The Independent Certifier shall within 30 Business Days after the Proceeding At Risk Notice, deliver to each of the City and DB Co its written opinion as to whether the City acted reasonably in delivering the Proceeding At Risk Notice.
- (f) Within 15 Business Days after receipt by the City of all deliverables contemplated by Section 14.6(c) and, if applicable, Section 14.6(d), and in any event, no later than 35 Business Days after

receipt by DB Co of the Proceeding At Risk Notice, the Works Committee shall meet in person (the “**PAR Meeting**”) to attempt to resolve the Proceeding At Risk Matter.

- (g) Within five Business Days after the PAR Meeting and, in any event, no later than 40 Business Days after receipt by DB Co of the Proceeding At Risk Notice (“**PAR Meeting Expiry Date**”), the Works Committee shall attempt to reach a final decision with respect to the Proceeding At Risk Matter. If the Works Committee is unable to reach a final decision, and the Independent Certifier’s opinion delivered pursuant to Section 14.6(e) confirms that the City acted reasonably in delivering the Proceeding At Risk Notice, DB Co shall be deemed to be “**Proceeding At Risk**” and the City may, in its sole discretion, give notice to the Lenders’ Agent pursuant to Section 15 of the Lenders’ Direct Agreement, that DB Co is Proceeding At Risk, together with the relevant information supporting the City’s opinion that DB Co is Proceeding at Risk.
- (h) Regardless of the Independent Certifier’s opinion, if the Works Committee fails to reach a final decision with respect to the Proceeding At Risk Matter by the PAR Meeting Expiry Date, either Party may refer the Proceeding At Risk Matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (i) The Proceeding At Risk Notice, review, and comments made during the process set out in this Section 14.6 are for general conformity to the obligations and requirements of this Project Agreement, and any such Notice, review and comment shall not relieve DB Co of the risk and responsibility for the Works and for meeting all of its obligations under and satisfying all requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for the City.
- (j) If it is determined in accordance with Schedule 27 – Dispute Resolution Procedure that DB Co should not have been deemed to be Proceeding at Risk under Section 14.6(g), the City shall (i) promptly notify the Lender’s Agent that it is withdrawing its notice given pursuant to Section 14.6(g), if applicable, and (ii) reimburse DB Co for its reasonable costs incurred in connection with responding to a Proceeding at Risk Notice and for its participation in the Proceeding at Risk Matter.

15. INTEGRATED MANAGEMENT SYSTEM

15.1 Integrated Management System

- (a) DB Co shall comply with the provisions of Schedule 11 – Integrated Management System Requirements.

15.2 Safety Management

- (a) DB Co shall cause the Construction Contractor, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems on an annual basis until Final Completion or as otherwise required in accordance with Sections 11.25(b)(vi)(C) or 11.25(b)(vii)(C) (each, an “**H&S Construction Inspection**”), which H&S Construction Inspections shall:
 - (i) be conducted by a Certified H&S Inspector, and
 - (ii) during the performance of the Works, include, at a minimum,

- (A) a review of general compliance with all applicable Occupational Health and Safety Act (Ontario) requirements, compliance with all safety manuals applicable to the Site at which the Works are being conducted; and
 - (B) a review of the Construction Contractor's job hazard analysis documentation on any portion of the Lands which could endanger or put at risk the safety of any person working on any portion of the Lands;
- (b) DB Co shall cause the results of each H&S Construction Inspection (such results referred to as the “**H&S Construction Inspection Report**”) to be delivered to the City and the Works Committee not more than five Business Days from the date on which a H&S Construction Inspection is completed. An H&S Construction Inspection Report arising from an H&S Construction Inspection shall be tabled and presented by DB Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Inspection Report was issued.
- (c) To the extent an H&S Construction Inspection Report discloses any non-compliance by the COR-Qualified Construction DB Co Party or the COR-Certified Construction DB Co Party, as the case may be, with the terms of the COR Certification or OHSAS 18001 Accreditation, as the case may be, the City shall have the right to require DB Co to cause the COR-Qualified Construction DB Co Party or the COR-Certified Construction DB Co Party, as the case may be, at its sole cost and expense:
 - (i) to take any corrective and remedial action required by the H&S Construction Inspection Report to correct any such non-compliance and DB Co shall cause the COR-Qualified Construction DB Co Party or the COR-Certified Construction DB Co Party, as the case may be, to comply with all instructions given by the Certified H&S Inspector in respect of actions required to be taken to correct any such non-compliance;
 - (ii) to arrange to have conducted by a Certified H&S Inspector such follow-up H&S Construction Inspections of those facilities and health management systems associated with the non-compliances identified in the relevant H&S Construction Inspection Report (each, an “**H&S Construction Re-Inspection**”) within three Business Days from the date on which any such request is made by the City, until any and all corrective and remedial actions required by the Certified H&S Inspector with respect to the correction of each identified non-compliance is completed to the satisfaction of the Certified H&S Inspector; and
 - (iii) to cause the results of each H&S Construction Re-Inspection (such results referred to as the “**H&S Construction Re-Inspection Report**”) to be delivered to the City and the Works Committee not more than three Business Days from the date on which a H&S Construction Re-Inspection is completed. An H&S Construction Re-Inspection Report arising from an H&S Construction Re-Inspection shall be tabled and presented by DB Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Re-Inspection Report was issued.

16. ACCESS TO THE LANDS

16.1 Access to Lands

- (a) Subject to this Section 16 and the provisions of Schedule 20 – Lands, including any restrictions on the use and access to the Lands set out Schedule 20 – Lands, the City shall grant or have caused to be granted, and shall continuously grant or cause to be granted, to DB Co and all DB Co Parties non-exclusive licence rights of use and access to, on and over the Lands, except such rights set out as a DB Co responsibility to obtain under the Permits, Licences, Approvals and Agreements tables attached as Schedule 35 – Permits, Licences, Approvals and Agreements, as are required by DB Co and such DB Co Parties and sufficient (subject to DB Co performing its obligations described in the Permits, Licences, Approvals and Agreements tables attached as Schedule 35 – Permits, Licences, Approvals and Agreements and subject to the timing and extent of the grant of use and access to the Lands set out in Schedule 20 – Lands) to allow DB Co and such DB Co Parties to perform that part of the Works to be performed on Lands. The rights granted to DB Co pursuant to this Section 16.1(a) shall be effective on the later of,
- (i) the date of Financial Close; and
 - (ii) the commencement date for access to individual parcels of lands that comprise the Lands as set out in Schedule 20 – Lands.
- (b) Subject to DB Co's obligation to comply with the other terms and conditions set forth in this Project Agreement and the other Project Documents, DB Co shall ensure that each DB Co Party shall at all times, when entering the Lands, act in a manner consistent with the obligations of DB Co under the Project Agreement.
- (c) In consideration for the use and access rights granted pursuant to Section 16.1(a), DB Co shall provide the Works subject to and in accordance with this Project Agreement.
- (d) Without derogating from any of the City's rights hereunder, in particular, and subject to any restrictions set out in Schedule 20 – Lands, the City acknowledges that, in respect of the Works, DB Co and the DB Co Parties require, and the City shall provide, access to the Lands in accordance with Section 16.1(a) without material interference by the City, any City Party, MTO, RTG or any RTG Party (except as provided in the Interface Agreement). DB Co further acknowledges that following Substantial Completion, DB Co's access to the applicable Lands shall be subject to the City Activities.
- (e) Subject to Section 16.1(a), none of the rights granted pursuant to this Section 16.1 shall grant access to,
- (i) any lands beyond the boundaries of the Lands, or to any lands other than the Lands, other than easements and similar interests of the City which benefit the Lands, obtained after the date of this Project Agreement, to the extent the same are necessary for the Works or exceed any restrictions set out in Schedule 20 – Lands; or
 - (ii) any facilities or infrastructure of the City, Utility Companies, Railway Companies, MTO or any other third parties, except as set out in Schedule 20 – Lands (which access, if any, is subject to Section 16.1(b)).

- (f) The use and access rights provided in this Section 16.1 shall automatically terminate as of the Termination Date, save and except for any earlier termination of the use and access rights specified in Schedule 20 – Lands.
- (g) For greater certainty, the use and access rights provided in this Section 16.1 shall not entitle DB Co or any DB Co Party to extract any mineral from the Lands for use in the Works.
- (h) The City shall acquire use of and access to the Lands described in Schedule 20 – Lands on or prior to the applicable commencement date for access set out in Schedule 20 – Lands. The City shall provide Notice to DB Co of the commencement of access rights to the Lands as such access is obtained by the City.

16.2 Non-Exclusive Rights to Lands and Development of Lands

- (a) Without prejudice to Section 11.12, DB Co acknowledges and agrees that the rights granted to DB Co and the DB Co Parties hereunder to the Lands shall be non-exclusive and that the City and any person authorized by the City may occupy and possess the Lands, the New City Infrastructure, the New MTO Infrastructure and the Existing Infrastructure (in each case, on the Lands) without the prior consent of DB Co, including for the purposes of carrying out the Governmental Activities, the Other Works or RTG Works. In exercising its rights DB Co shall not, and shall require that the DB Co Parties shall not, except as permitted under this Project Agreement, disrupt the performance of the Governmental Activities, the Other Works or RTG City Party Works.
- (b) Without limiting Section 16.2(a), DB Co acknowledges that the City may from time to time use or develop (including by way of subdivision or expansion), or permit the use or development of, or dispose of, portions of the Lands, other than those portions of the Lands (or interests in the Lands) necessary for the performance of the Works. To the extent that such use, development or disposition materially adversely interferes with DB Co's licence rights hereunder or materially adversely interferes with DB Co's ability to perform the Works, such use, development or disposition shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. For greater certainty, but without limiting the generality of the foregoing, DB Co acknowledges and agrees that certain of the Lands shall be subject to the restrictions set out in Schedule 20 – Lands and Schedule 15 – Output Specifications.
- (c) Access to Existing Infrastructure shall be provided for in accordance with Schedule 20 – Lands and any Permits, Licences, Approvals and Agreements.
- (d) Except as otherwise specified in the Output Specifications or elsewhere in this Project Agreement, DB Co acknowledges and agrees with the City that the City has no authority to grant use and access to the Third Party Lands, which use and access must be sought from MTO in accordance with the Applicable Law and any Permit, License, Approval or Agreement or other requirements imposed by MTO. DB Co shall be solely responsible to obtain permission from applicable third parties access to the Existing Infrastructure or any component thereof owned by third parties.

16.3 [Not Used]

16.4 Naming and Signage

- (a) DB Co acknowledges that the City and the applicable owners of the New MTO Infrastructure and the Existing Infrastructure reserve and retain,
 - (i) all rights to designate the name for the New City Infrastructure, the New MTO Infrastructure and the Existing Infrastructure, and any part thereof and to retain all revenues derived from the sponsorship of such names;
 - (ii) all rights to signage in relation to the Lands and any part of the New City Infrastructure, the New MTO Infrastructure and the Existing Infrastructure; and
 - (iii) all rights, Trade-Marks, naming or branding regarding any part of the New City Infrastructure, the New MTO Infrastructure and the Existing Infrastructure.
- (b) Without limiting the City's rights pursuant to Section 16.4(a), with the prior written consent of the City, which may take into consideration,
 - (i) any applicable governmental or other guidelines, including the guidelines set out in Schedule 15 – Output Specifications or Schedule 18 – Communication and Stakeholder Engagement Obligations; and
 - (ii) any provision or restriction set out in Schedule 20 – Lands,

DB Co, the DB Co Parties and the Lenders may, for the period prior to Substantial Completion, erect and maintain signage (which may include such parties' logos and trade names) at or on the Lands identifying their respective roles in connection with the development and construction of the Project, provided that such signage is erected and maintained in accordance with the requirements and restrictions set out in this Project Agreement, including Schedule 15 – Output Specifications and Schedule 18 – Communication and Stakeholder Engagement Obligations.

16.5 No Interest in Land, Facilities or Infrastructure

- (a) DB Co acknowledges and agrees that neither DB Co nor the Lenders shall acquire any estate, right, title or ownership interest in the Lands or any part of the New City Infrastructure, the New MTO Infrastructure or the Existing Infrastructure, or any other interest in land, facilities or infrastructure pursuant to this Project Agreement, the Project Documents or otherwise. Notwithstanding any provision herein or in any of the Project Documents to the contrary, all fee simple interest in and freehold title to the Lands, or any part thereof, and the Project, shall at all times remain unencumbered by any interest of DB Co or the Lenders. DB Co and the Lenders shall have access to the Lands and the New City Infrastructure under and subject to the licences and access rights granted under this Section 16 and the Lenders' Direct Agreement, respectively.

16.6 Non-Disturbance Agreement

- (a) If the City mortgages, charges or otherwise encumbers the Lands, the City shall notify DB Co and, at the request of DB Co, provide DB Co with an agreement, in form satisfactory to DB Co, acting reasonably, executed by the mortgagee of the Lands permitting DB Co and the Lenders'

Agent to access and use the Lands under the use and access granted pursuant to this Section 16 and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee or any person claiming by or through the mortgagee. This Section 16.6 shall not apply in respect of any portion of the Lands used or developed pursuant to Section 16.2(b) if neither the licence granted pursuant to this Section 16 nor the Works pertain to such portion of the Lands.

16.7 Adjustments to Lands Available to DB Co

- (a) [REDACTED]
- (b) [REDACTED]
- (c) DB Co shall be entitled to obtain any properties (or obtain temporary access to any properties) at its own cost and expense, however, such properties shall not, for the purposes of this Project Agreement, be Lands and no New City Infrastructure shall be located on, or rely in any way upon, any properties which DB Co acquires pursuant to this Section 16.7(b).

17. ENCUMBRANCES

17.1 DB Co Shall Perform Obligations Under Encumbrances

- (a) DB Co's access to and use of the Lands or any part thereof granted in Section 16 shall be subject to the Encumbrances.
- (b) Subject to Section 17.2, DB Co shall perform all obligations of the City under all Encumbrances for or on behalf of the City, other than:
 - (i) obligations which DB Co is not legally capable of performing for or on behalf of the City; and
 - (ii) obligations which the applicable counterparty to such Encumbrance formally relieves or waives DB Co from performing, with the consent of the City, in its sole discretion (and if such relief or waiver is not consented to by the City, and subject to Section 17.1(b)(i), DB Co shall perform such obligations in accordance with this Section 17).
- (c) DB Co, whether before, during or after the completion of the Works, shall not in any manner breach the Encumbrances.

17.2 No Encumbrances

- (a) DB Co shall not create, incur, permit or suffer to exist any Encumbrance to be created, filed, issued or registered upon or against the Lands or any part of them or any interest therein (i) due to an act or omission of DB Co or any DB Co Party, or (ii) arising in relation to the Works.
- (b) DB Co does not have title to the Lands or any interest therein, and no act or omission by DB Co or any DB Co Party shall give rise to a right for any person to obtain title to or any interest in the Lands or any part thereof, except:
 - (i) as may be expressly agreed to in writing by the City or the applicable third party owner of the Lands;

- (ii) as may be expressly permitted by the terms of this Project Agreement; or
 - (iii) as may be permitted under Applicable Law, but without limiting DB Co's obligations under Sections 17.2(c)(i) and 17.3(a).
- (c) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance following Financial Close,
 - (i) due to an act or omission of DB Co or any DB Co Party (which has not been consented to in writing by the City), or arising in relation to the Works, DB Co shall immediately take all steps necessary to terminate, remove, vacate or discharge such Encumbrance. If such Encumbrance is not terminated, removed, vacated or discharged within 10 Business Days after DB Co becoming aware of the creation, filing, issuance or registration of such Encumbrance, then, without prejudice to any other rights or remedies it may have, the City may take whatever steps it deems necessary and appropriate, in its sole discretion, to terminate, remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from DB Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand, and DB Co hereby appoints the City as DB Co's attorney to execute any termination or discharge of an Encumbrance referred to in this Section 17.2(c)(i) which appointment is coupled with an interest and shall be irrevocable for the Project Term and thereafter so long as any of DB Co's obligations under this Section 17.2(c)(i) are outstanding;
 - (ii) due to an act or omission of DB Co or any DB Co Party (which has been consented to in writing by the City), or arising in relation to the Works, DB Co shall perform all obligations under such Encumbrance in accordance with Sections 17.1 and 17.3 (as is applicable) and at its sole cost and expense; or
 - (iii) which is not due to an act or omission of DB Co or any DB Co Party, or which has not arisen in relation to the Works, prior to performing obligations under any such Encumbrance, DB Co shall promptly notify the City of any such Encumbrance and the City may elect, in its sole discretion, to:
 - (A) have such Encumbrance be removed, vacated or discharged at the City's sole cost and expense;
 - (B) perform the required obligations thereunder; or
 - (C) instruct DB Co to perform the required obligations thereunder.
- (d) For the purposes of this Section 17, if,
 - (i) an encumbrance otherwise identified in Sections (b)(viii), (ix) or (x) of Schedule 16 – Encumbrances has not been complied with (excluding non-compliance by DB Co and DB Co Parties) and such non-compliance materially interferes with the use of the Lands for the purposes of the Works; or
 - (ii) an encumbrance otherwise identified in Sections (b)(vii), (viii), (ix) or (x) of Schedule 16 – Encumbrances was not disclosed to DB Co and was not ascertainable through

commercially standard off-title searches, and such encumbrance materially interferes with the use of the Lands for the purposes of the Works,

the City shall be entitled to the same election as set out in Section 17.2(c)(iii), subject to Section 17.2(e). DB Co shall promptly notify the City of any such encumbrance upon DB Co becoming aware of such encumbrance.

- (e) If DB Co is instructed to perform obligations under an Encumbrance pursuant to Section 17.2(c)(iii) or Section 17.2(d), which performance imposes costs or delays in the performance of Works, such performance shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

17.3 Construction Act (Ontario)

- (a) The Parties acknowledge that Section 17.2 shall apply to claims for liens made against the Lands pursuant to the CA and shall also apply to claims made against the City or the holdback under the CA as though such a claim were an Encumbrance against the Lands as referred to therein. For clarity, Section 17.2 shall not apply to claims for lien that do not relate to the Work provided or performed by or on behalf of DB Co and DB Co Parties.
- (b) DB Co shall withhold from each Subcontractor the holdbacks required under the CA and shall deal with such holdbacks in accordance with the CA.
- (c) DB Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CA, require that a certificate of completion under section 33(1) of the CA for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) DB Co shall follow the requirements of the CA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) DB Co shall promptly provide the City with a copy of any materials which are provided to the Lenders to evidence compliance with the CA.
- (f) Upon request by the City, DB Co shall perform and deliver to the City a sub-search of title on the Lands or any part thereof. The City shall pay the reasonable costs of any such search except (i) a search that reveals Encumbrances that are not permitted by this Project Agreement, (ii) a search requested based on a reasonable suspicion that an Encumbrance that is not permitted by this Project Agreement has been registered on title to the Lands, and (iii) a search requested for the purpose of confirming that an Encumbrance that is not permitted by this Project Agreement has been discharged from title to the Lands.
- (g) DB Co shall cause a Payment Certifier to be appointed under the Design and Construction Contract and shall cause such Payment Certifier to certify the substantial performance of the Design and Construction Contract in accordance with the CA.

- (h) The City shall, and shall cause MTO to, provide DB Co with any notice of lien that is delivered to the City or MTO in connection with the Works promptly (and in any event within 5 Business Days) following receipt thereof.

18. SITE CONDITIONS AND RELIANT INFORMATION

18.1 Acceptance of Site Conditions

- (a) Subject to Sections 7.4, 18.1(b), 18.2, 18.3, 18.4, 18.5, 18.6, 18.7 and 18.8 DB Co acknowledges and agrees that it has inspected or investigated the Lands, the Existing Infrastructure (including the surroundings thereof) on which Works will be performed, and the Site Conditions in accordance with Good Industry Practice taking into account all matters relating to the Lands (including the buildings, structures and works, on, over and under the Lands existing on the date hereof and the Background Information), the Existing Infrastructure on which Works will be performed, and the Site Conditions prior to executing this Project Agreement and agrees to accept the Lands, the Existing Infrastructure on which Works will be performed, and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 7.4, 18.1(b), 18.2, 18.3, 18.4, 18.5, 18.6, 18.7 and 18.8, DB Co shall not be entitled to make any claim of any nature whatsoever against the City or any City Party, or RTG or any RTG Party, on any grounds relating to the Lands, the Existing Infrastructure on which Works will be performed, or the Site Conditions, including the fact that incorrect or insufficient information on any matter relating to the Lands, the Existing Infrastructure on which Works will be performed, or the Site Conditions was given to it by any person, whether or not the City or a City Party, RTG or any RTG Party.
- (b) Section 18.1(a) is not intended to prohibit DB Co from relying upon information that has been provided by a person who has given DB Co an express written entitlement to rely on that information, provided however, subject to Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6, 18.7 and 18.8, DB Co shall not be entitled to make any claim of any nature whatsoever against the City or any City Party, RTG or any RTG Party, on any grounds relating to the information provided by that person. For clarity, subject to Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6, 18.7 and 18.8, DB Co’s legal recourse shall be against the person who provided the express written entitlement to rely on the information and not the City or any City Party, or RTG or any RTG Party.
- (c) Subject to Sections 7.4, 18.1(b), 18.2, 18.3, 18.4, 18.5, 18.6, 18.7 and 18.8, DB Co acknowledges and agrees that it has and shall be deemed to have:
 - (i) performed all necessary due diligence and investigations or inspections on the Lands, and examined the Lands and its surroundings and any existing works on, over or under the Lands in accordance with Good Industry Practice, taking into account all matters relating to the Lands, including any Existing Infrastructure, and any other buildings, structures and works, on, over and under the Lands existing on the date hereof;
 - (ii) performed all necessary due diligence and investigation or inspection on the Existing Infrastructure in accordance with Good Industry Practice on which Works will be performed and satisfied itself prior to executing this Project Agreement as to the structural, environmental and general condition of such Existing Infrastructure;
 - (iii) in accordance with Good Industry Practice, taking into account all matters relating to the Lands, including any Existing Infrastructure, and any other buildings, structures and

works, on, over and under the Lands existing on the date hereof, satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Lands, the loadbearing and other relevant properties of the Lands, the risk of injury or damage to property affecting the Lands, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works;

- (iv) satisfied itself as to the presence of any Contamination on, in or under the Lands, in accordance with Good Industry Practice, taking into account all matters relating to the Lands, including any Existing Infrastructure, and any other buildings, structures and works, on, over and under the Lands existing on the date hereof;
 - (v) satisfied itself as to the adequacy of the Lands, rights of access to, from and through the Lands and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
 - (vi) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands; and
 - (vii) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (d) DB Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to DB Co or any DB Co Party, which would indicate that DB Co would be unable to perform the Works in a lawful manner.

18.2 Contamination

- (a) At all times prior to the applicable Substantial Completion Date, DB Co shall be responsible for managing, remediating and/or removing, in accordance with Section 4.5 of Schedule 17 – Environmental Obligations, any Contamination located on, in or under the Site which was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports or the Geotechnical Reports made available to DB Co at least 30 days prior to the RFP Technical Submission Deadline (“**Existing Contamination**”). Notwithstanding the forgoing or anything else to the contrary contained in this Agreement, DB Co shall have no responsibility for any Contamination that is migrating to or from the Lands, except (I) to the extent that DB Co or any DB Co Party Released such Contamination in a manner which does not comply with Applicable Law or (II) DB Co or any DB Co party is causing the migration of Existing Contamination.
- (b) DB Co shall be responsible for managing, removing or remediating, in accordance with Section 4.5 of Schedule 17 – Environmental Obligations:
 - (i) any Contamination on, in or under the Lands which DB Co or any DB Co Party has brought onto the Lands or lands adjacent to the Lands and caused to be Released in a manner which does not comply with Applicable Law; and

- (ii) any Existing Contamination which was harmless or stored, contained or otherwise dealt with in accordance with Applicable Law which DB Co or any DB Co Party causes to be Released in a manner which does not comply with Applicable Law.

In addition, and without limiting any other obligation of DB Co under the Project Agreement, DB Co shall be responsible for all Direct Losses associated with the Releases of Contamination or Existing Contamination described in Sections 18.2(b)(i) and 18.2(b)(ii) above and, to the extent of DB Co's responsibility for Contamination that is migrating to or from the Site, Section 18.2(a).

- (c) Contamination which is not the responsibility of DB Co pursuant to Sections 18.2(a) and 18.2(b) shall be the responsibility of the City.
- (d) Upon the discovery of any Contamination, DB Co shall immediately inform the City Representative and shall comply, and ensure compliance by all DB Co Parties, with all Applicable Law and Schedule 17 - Environmental Obligations in respect thereof:
 - (i) at the City's cost pursuant to Section 18.2(g), in respect of Contamination for which the City is responsible pursuant to Section 18.2(c); and
 - (ii) at its own cost in respect of Contamination for which it is responsible pursuant to Section 18.2(a) or 18.2(b).
- (e) Except to the extent required to prevent or mitigate an Emergency or to comply with Applicable Law, DB Co shall not undertake any significant work pursuant to Section 18.2(d) in respect of Contamination for which the City is responsible pursuant to Section 18.2(c) until the City Representative has been given a reasonable opportunity to review the nature and extent of the Contamination and has instructed DB Co to proceed with such work.
- (f) In the event that the City wishes DB Co to perform actions in respect of any Contamination which are in addition to any required pursuant to Section 18.2(d), then the City shall issue an instruction to DB Co specifying what action the City requires DB Co to take and DB Co shall promptly and diligently comply with all such instructions at the City's cost pursuant to Section 18.2(g).
- (g) If Sections 18.2(d)(i), 18.2(e) or 18.2(f) require DB Co to perform any alteration, addition, Demolition, extension or variation in the Works as a result of Contamination for which the City is responsible pursuant to Section 18.2(c) or as a result of any instructions given by the City pursuant to Section 18.2(f) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, Demolition, extension or variation in the Works shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (h) In the event that the City and DB Co do not agree as to the nature or extent of Contamination, or in the event of a disagreement as to whether DB Co is responsible for Contamination pursuant to either Sections 18.2(a) or 18.2(b), or the actions to be performed by DB Co pursuant to Section 18.2(d) or Schedule 17 – Environmental Obligations, such disagreement shall be referred for determination to a panel of 3 independent and suitably qualified and experienced persons, 1 appointed by the City, 1 appointed by DB Co, and a third appointed jointly by the appointees of the City and DB Co. If either Party fails to appoint such appointee within 10 Business Days of delivery Notice of such disagreement, or if the appointees of the City and DB Co fail to appoint

the third appointee within 10 Business Days of the later of their respective appointments, then the Superior Court of Justice of Ontario shall appoint such appointee. The costs and expenses of retaining such appointees shall be borne by the unsuccessful Party. Such panel shall endeavour to deliver a decision within 15 Business Days of any such disagreement being referred to such panel. Such panel's decision shall be determined by majority and shall be final and binding on the Parties only in respect of the nature of the Contamination and any action to be performed by DB Co pursuant to Section 18.2(d), except to the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

18.3 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Lands are or shall be the sole and absolute property of the City or the owner of the relevant property, as applicable.
- (b) The City shall be responsible for items referred to in Section 18.3(a) except for any such items that were described in, or were properly inferable, readily apparent or readily discoverable from any Archaeological Reports or any Cultural Heritage Reports.
- (c) Upon the discovery of any item referred to in Section 18.3(a), DB Co shall:
 - (i) immediately inform the City Representative of such discovery; and
 - (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such Works would endanger the item or prevent or impede its excavation, take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found, and comply, and ensure that all DB Co Parties comply, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremations Services Act, 2002* (Ontario) and the *Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the Ontario Heritage Act* (Ontario):
 - (A) subject to and in accordance with Section 18.3(e), at the City's cost, in respect of any such discovery for which the City is responsible pursuant to Section 18.3(b); and
 - (B) at its own cost in respect of any such discovery for which it is responsible pursuant to Section 18.3(b).
- (d) In the event that the City wishes DB Co to perform actions in respect of any discovery of any item referred to in Section 18.3(a) which are in addition to any required pursuant to Section 18.3(c), then the City shall issue an instruction to DB Co specifying what action the City requires DB Co to take and DB Co shall promptly and diligently comply with all such instructions at the City's cost subject to and in accordance with Section 18.3(e).
- (e) If Section 18.3(c) or Section 18.3(d) require DB Co to perform any alteration, addition, Demolition, extension or variation in the Works as a result of any such discovery for which the

City is responsible pursuant to Section 18.3(b) or as a result of any instructions given by the City pursuant to Section 18.3(d) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, Demolition, extension or variation shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

- (f) In the event that the City and DB Co do not agree as to the nature or extent of the actions required to be performed by DB Co pursuant to Section 18.3(c)(ii), such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to DB Co and the City, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person's decision shall be final and binding on the Parties except to the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

18.4 Species-at-Risk

- (a) DB Co shall be responsible for any Species-at-Risk which may be found on, in or at the Site, the occurrence of which, in the location in which it is found, was described in the Environmental Assessments. The City shall be responsible for any Species-at-Risk which may be found on, in or at the Site, except for any Species-at-Risk the occurrence of which, in the location in which it is found, was described in the Environmental Assessments.
- (b) In respect of Species-at-Risk for which DB Co is responsible pursuant to Section 18.4(a), DB Co shall, at its own cost, comply, and ensure compliance by all DB Co Parties, with all Applicable Law and the provisions of Schedule 17 – Environmental Obligations. Upon the discovery of any Species-at-Risk for which the City are responsible pursuant to Section 18.4(a), DB Co shall:
 - (i) immediately inform the City Representative of such discovery; and
 - (ii) comply, and ensure compliance by all DB Co Parties, with all Applicable Law and the provisions of Schedule 17 - Environmental Obligations in respect thereof, including taking all necessary steps to preserve the respective habitat and relocate the Species-at-Risk at the City's cost pursuant to Section 18.4(d).
- (c) In the event that the City wishes DB Co to perform actions which are in addition to any required pursuant to Section 18.4(b), then the City shall issue an instruction to DB Co specifying what action the City requires DB Co to take and DB Co shall promptly and diligently comply with all such instructions at the City's cost pursuant to Section 18.4(d).
- (d) If Sections 18.4(b) or 18.4(c) require DB Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of the discovery of any Species-at-Risk for which the City is responsible pursuant to Section 18.4(a) or as a result of any instructions given by the City pursuant to Section 18.4(c) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
 - (i) prior to Substantial Completion shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event; and

- (ii) following Substantial Completion shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

18.5 Stage 1 Connection Infrastructure

- (a) DB Co has reviewed the Stage 1 Connection Infrastructure Preliminary Report, and shall, subject to terms of this Section 18.5, undertake the design and Construction Activities related to the interface and interconnection of the Confederation Line East Extension and Confederation Line West Extension with the Existing Confederation Line in accordance with this Project Agreement. DB Co shall be entitled to assume and rely on the fact that the actual specifications and conditions of the Stage 1 Connection Infrastructure, upon completion of construction and commissioning such Stage 1 Connection Infrastructure, will be as described in the Stage 1 Connection Infrastructure Preliminary Report.
- (b) After Financial Close, and no later than June 25, 2019 the City will provide updated information, to the extent available, relating to the Stage 1 Connection Infrastructure Preliminary Report. No later than December 31, 2019, the City shall provide to DB Co a Stage 1 Connection Infrastructure Final Report.
- (c) If the Stage 1 Connection Infrastructure, or the Stage 1 Connection Infrastructure Final Report, demonstrates a deviation from the Stage 1 Connection Infrastructure Preliminary Report or the requirements in the Output Specifications, unless such deviation:
 - (i) was within the actual knowledge of DB Co or a DB Co Party, as of the date which is 30 days prior to the RFP Technical Submission Deadline;
 - (ii) was disclosed as such by the City to DB Co at least 30 days prior to the RFP Technical Submission Date (either in the Stage 1 Connection Infrastructure Preliminary Report or otherwise); or
 - (iii) has been, or is reasonably capable of being fully mitigated by DB Co without (A) incurring additional expenses which, when aggregated with all such other expenses incurred by DB Co and DB Co Parties in mitigating other such deviations from the Stage 1 Connection Infrastructure Preliminary Report or requirements in the Output Specifications, exceed \$[REDACTED], or (B) delaying the Critical Path,

to the extent that such deviation requires DB Co to perform any alteration, addition, demolition, extension, re-performance or variation in the Works, which would not otherwise be required under this Project Agreement, or otherwise delays DB Co's performance of the Works, any such alteration, addition, demolition, extension, variation or delay shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

- (d) For the purposes of Section 18.5(c)(i), "actual knowledge of DB Co" shall mean knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in DB Co's proposal in response to the Request for Proposals.

18.6 Mislocated or Unknown Utilities

- (a) DB Co shall be responsible for Utility Infrastructure on the Site pursuant to Schedule 15 – Output Specifications, except for any Utility Infrastructure that is:
 - (i) Mislocated Utility Infrastructure; or
 - (ii) is Utility Infrastructure that:
 - (A) was not within the actual knowledge of DB Co or a DB Co Party, as of the date which is 30 days prior to the RFP Technical Submission Deadline; and
 - (B) was not referenced or described in, or was not inferable, readily apparent or readily discoverable, from the Background Information.
- (b) For the purposes of Section 18.6(a)(ii)(A), “actual knowledge of DB Co” shall mean knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in DB Co’s proposal in response to the Request for Proposals.
- (c) If Utility Infrastructure on the Site that is not the responsibility of DB Co pursuant to Section 18.6(a) delays DB Co’s performance of the Works then any such delay or additional costs in respect of the Works shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (d) DB Co shall not be eligible for the Delay Event or Compensation Event set out in this Section 18.6 in respect of:
 - (i) any Utility Infrastructure that is a service connection;
 - (ii) any Utility Infrastructure that is above-ground, aerial, or at-grade;
 - (iii) any of the following Utility Infrastructure that is owned by the City or MTO:
 - (A) watermains of nominal diameter less than 150mm;
 - (B) combined sewers or storm sewers of nominal diameter less than 300mm;
 - (C) sanitary sewers of nominal diameter less than 225mm; and
 - (D) street lighting and traffic signal cables;
 - (iv) any Utility Infrastructure relocations carried out at the Site within the study area limits represented by the Subsurface Utility Engineering (SUE) Reports subsequent to Commercial Close, or within the study area limits represented by the Roll Plans subsequent to the City obtaining such subsurface utility engineering information, in either case including with respect to,
 - (A) the Works; and
 - (B) Third Party Works and Additional Works.

- (e) Any Dispute as to whether Utilities encountered by DB Co are or not Mislocated Utility Infrastructure or Utility Infrastructure described in clause (i) or (ii) of Section 18.6(a) shall initially be submitted to the Independent Certifier for independent determination in accordance with Section 4 of Schedule 27 – Dispute Resolution Procedure.

18.7 Stage 1 Systems Information

- (a) DB Co shall be entitled to rely upon the accuracy of the Stage 1 Systems Information for purposes of the Works and shall be entitled to rely on the fact that the Existing Confederation Line systems have been built in accordance with the Stage 1 Systems Information and Stage 1 Project Agreement.
- (b) In the event of any defect, omission, error or inaccuracy in the Stage 1 Systems Information (including if the Stage 1 System Information is not compliant with the Stage 1 Project Agreement or demonstrates a deviation from the requirements in the Output Specifications), unless such defect, omission, error or inaccuracy:
 - (i) was within the actual knowledge of DB Co or a DB Co Party, as of the as of the date which is 30 days prior to the RFP Technical Submission Deadline; or
 - (ii) was disclosed as such by the City to DB Co at least 30 days prior to the RFP Technical Submission Date (either in the Stage 1 Systems Information or otherwise),and provided compliance with the requirements of this Project Agreement reasonably requires DB Co to perform any alteration, addition, demolition, extension or variation in the Works which would not otherwise be required under this Project Agreement, or if such defect, error or inaccuracy otherwise delays DB Co's performance of the Works, any such alteration, addition, demolition, extension, variation or delay shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (c) For the purposes of Section 18.7(b)(i), "actual knowledge of DB Co" shall mean knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in DB Co's proposal in response to the Request for Proposals.

18.8 Defects – Major Existing Third Party Infrastructure

- (a) The City shall be responsible for defects in Major Existing Third Party Infrastructure provided that the defect,
 - (i) was not within the actual knowledge of DB Co or a DB Co Party, as of the date which is 30 days prior to the RFP Technical Submission Deadline;
 - (ii) was not referenced or described in, or was not properly inferable, readily apparent or readily discoverable from, the Background Information;
 - (iii) was not properly attributable to the result of the aging of the Major Existing Third Party Infrastructure; or
 - (iv) was not caused or contributed to by DB Co or a DB Co Party.

- (b) For the purposes of Section 18.8(a)(i), “actual knowledge of DB Co” shall mean knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in DB Co’s proposal in response to the Request for Proposals.
- (c) If a defect in Major Existing Third Party Infrastructure that is the responsibility of the City pursuant to Section 18.8(a), delays DB Co’s performance of the Works, then any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

19. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS

19.1 Governmental and Third Party Financial Obligations

- (a) DB Co shall be responsible for,
 - (i) all Financial Obligations under or in respect of all DB Co Permits, Licences, Approvals and Agreements, including,
 - (A) any engineering, administration and inspection fees required in respect of works or services to be performed;
 - (B) any security deposits required under any DB Co Permits, Licences, Approvals and Agreements; and
 - (C) any other amounts payable under any DB Co Permits, Licences, Approvals and Agreements; and
 - (ii) all Financial Obligations in respect of the City Permits, Licences, Approvals and Agreements that are set out as being DB Co’s responsibility in Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations or Schedule 35 – Permits, Licences, Approvals and Agreements, including any engineering, administration and inspection fees required in respect of works or services to be performed.
- (b) For clarity, and notwithstanding Section 19.1(a), DB Co shall not be responsible for payment of any development charges relating to the Works, the New City Infrastructure, the New MTO Infrastructure or the Lands.
- (c) Subject to Section 19.1(a)(ii), the City shall be responsible for all Financial Obligations under or in respect of all the City Permits, Licences, Approvals and Agreements including such Financial Obligations, as applicable in either case, to the City of Ottawa, any Utility Company, any Railway Company, any Governmental Authority or any other third party in respect of the Works, including:
 - (i) any engineering administration and inspection fees required in respect of works or services required to be performed;
 - (ii) any security deposits required under any City Permits, Licences, Approvals and Agreements; and

- (iii) any other amounts payable under any City Permits, Licences, Approvals and Agreements.
- (d) The Parties agree that any refund, partial rebate or credit granted by the City, any applicable Utility Company, any applicable Railway Company, or any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Sections 19.1(a), 19.1(b) and 19.1(c) shall be for the benefit of the City to the extent such Financial Obligations were paid by the City (including pursuant to Section 11.29) and shall be for the benefit of DB Co to the extent such Financial Obligations were paid by DB Co. Without limiting the generality of the foregoing, to the extent that the City enters into any cost sharing arrangements with any Utility Company, any Railway Company, any Governmental Authority or any third party, DB Co acknowledges and agrees that the City shall be the sole beneficiary of any such cost sharing arrangements and DB Co shall have no entitlement whatsoever to any benefit arising from any such cost sharing arrangements.

20. CITY ACCESS AND MONITORING

20.1 City Access During the Works

- (a) Subject to Section 20.1(b) but without limiting any of the City's rights in respect of the Lands, the New City Infrastructure, the New MTO Infrastructure or the right of any third party in relation to that third party's portion of the Lands or New MTO Infrastructure, DB Co acknowledges and agrees that DB Co shall not restrict the access of the City, and the Government Entities and their respective representatives, to,
 - (i) the Lands, the New City Infrastructure, the New MTO Infrastructure or any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours, including for the purposes of general inspection or audit, or of attending any test or study being carried out in respect of the Works, or to fulfill any statutory, public or other duties or functions; or
 - (ii) the Lands, the New City Infrastructure, the Existing Infrastructure for the purpose of operating the Existing Confederation Line.

For clarity, nothing in this Section 20.1 shall restrict or impede the City's or any other third party owner's right to use and access the Existing Infrastructure or any part of the Lands not required at that time for DB Co's performance of the Works in accordance with the terms hereof.

- (b) In exercising their access rights under Section 20.1(a) in respect of the Lands, the City shall, and shall cause the Government Entities, and their respective representatives, to:
 - (i) provide reasonable prior Notice appropriate to the circumstances (other than for any offices or other facilities provided for the use of the City and/or Government Entities);
 - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the DB Co Representative from time to time; and
 - (iii) if required by DB Co, be accompanied by a representative of DB Co or a DB Co Party.

20.2 Increased Monitoring

- (a) If, at any stage, the City is of the opinion, acting reasonably, that there are defects in the Works or that DB Co has failed to comply, in any material respect, with the requirements of this Project Agreement, the City may, without prejudice to any other right or remedy available to it, by Notice to DB Co, increase the level of monitoring of DB Co from that set out in this Project Agreement to such level as the City considers reasonable taking into account the nature of the relevant defect or failure until such time as DB Co shall have demonstrated, to the City's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations related to the Works under this Project Agreement. DB Co will compensate the City for any reasonable costs incurred as a result of such increased monitoring.

20.3 Right to Uncover

- (a) DB Co shall ensure that the City is afforded advance Notice of, and that the City is afforded a full opportunity to witness, all inspection and test activity in accordance with the Inspection and Test Plan. If DB Co does not provide such Notice and opportunity, DB Co shall at the request of the City uncover any relevant part of the Works which have been covered up or otherwise put out of view or remove any relevant part of the Works that have been proceeded with in order to permit the City to witness the relevant inspection or test activity. DB Co shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Works.
- (b) The City shall have the right, at any time prior to the East Final Completion Date, to request DB Co to uncover or open up and inspect (or allow the City to inspect) any part or parts of the East Works, or to require testing of any part or parts of the East Works, where the City reasonably believes that such part or parts of the East Works is or are defective or that DB Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the East Works, and DB Co shall comply with such request. When the City makes such a request, the City shall include reasonably detailed reasons with such request.
- (c) The City shall have the right, at any time prior to the West Final Completion Date, to request DB Co to uncover or open up and inspect (or allow the City to inspect) any part or parts of the West Works, or to require testing of any part or parts of the West Works (other than Highway Works in respect of which Section 20.3(d) shall apply), where the City reasonably believes that such part or parts of the West Works is or are defective or that DB Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the West Works, and DB Co shall comply with such request. When the City makes such a request, the City shall include reasonably detailed reasons with such request.
- (d) The City shall have the right, at any time prior to the applicable Handover, to request DB Co to uncover or open up and inspect (or allow the City to inspect) any part or parts of the Highway Works, or to require testing of any part or parts of the Highway Works, where the City reasonably believes that such part or parts of the Highway Works is or are defective or that DB Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Highway Works, and DB Co shall comply with such request. When the City makes such a request, the City shall include reasonably detailed reasons with such request.

- (e) If an inspection shows that the relevant part or parts of the Works is or are defective or that DB Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, DB Co shall rectify all such defects and non-compliance diligently and at no cost to the City and DB Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (f) If an inspection shows that the relevant part or parts of the Works is not or are not defective and that DB Co has complied with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, the exercise by the City of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

20.4 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by the City or the City Representative of the rights under this Section 20 shall in no way affect the obligations of DB Co under this Project Agreement except as set out in this Section 20.

20.5 Access by Others

- (a) Subject to Section 20.5(b) and subject to and in accordance with Section 11.12 (to the extent applicable), DB Co shall ensure that throughout the Project Term, without prejudice to any access rights of any such person as a member of the general public or pursuant to Applicable Law, that it does not restrict access to the Lands, New City Infrastructure, Existing Infrastructure, Stage 1 Connection Infrastructure or New MTO Infrastructure for:
 - (i) the Independent Certifier to the extent required to perform its obligations pursuant to Schedule 6 - Independent Certifier Agreement;
 - (ii) inspectors and other persons authorized to act on behalf of the City and owners of New MTO Infrastructure and Existing Infrastructure, for inspection and/or acceptance purposes;
 - (iii) all Other Contractors, including the owners or operators of any Third Party Facilities and their agents at all reasonable times to exercise any right or power or perform any duty or obligation under any Applicable Law or the Utility Agreements, Railway Orders or Encroachment Permits, provided that, wherever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, DB Co may limit such access so as to not unnecessarily impede or restrict traffic flows, the operation of the Existing Infrastructure or any Works;
 - (iv) all Governmental Authorities and Emergency Service Providers in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law and provided that, whenever consistent with the applicable requirements of such Governmental Authority, Emergency Service Providers or Applicable Law and the requirements of this Project Agreement (as the case may be), DB Co may limit such access so as to not unnecessarily impede or restrict traffic flows, the operation of the Existing Infrastructure or any Works;

- (v) any Other Contractors, owners or operators of Third Party Facilities, Governmental Authorities, MTO, Emergency Service Providers, Utility Companies, Railway Companies, Transit Systems and railway systems for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Lands, the New City Infrastructure, the New MTO Infrastructure and Existing Infrastructure owned or operated by such person or in which such person has any interest, provided that, whenever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, DB Co may limit such access so as to not unnecessarily impede or restrict traffic flows, the operation of the Existing Infrastructure or any Works;
 - (vi) any City Party to undertake emergency training in relation to the New City Infrastructure;
 - (vii) any City Party to undertake and perform Systems Integration Works in accordance with the Systems Integration Management Plan, or RTG or RTG Parties in accordance with the provisions of the Interface Agreement.
- (b) Subject to Section 20.5(c), the City shall require persons accessing Site(s) on the Lands in accordance with access rights under Section 20.5(a) to:
 - (i) provide reasonable prior Notice to DB Co appropriate to the circumstances;
 - (ii) comply with all relevant health and safety procedures and any reasonable directions with regard to health and safety that may be issued by or on behalf of the DB Co Representative from time to time; and
 - (iii) if reasonably required by DB Co, be accompanied by a representative of DB Co or a DB Co Party.
- (c) Section 20.5(b) shall not apply,
 - (i) to Additional Contractors, who shall instead comply with any instructions or procedures made by DB Co pursuant to Section 11.12;
 - (ii) in the case of access rights described in Section 20.5(a) for the purpose of responding to an Emergency ;
 - (iii) for the purposes of responding to an emergency declared by the City or by a Governmental Authority; and
 - (iv) in circumstance where the requirements of Section 20.5(b) are inconsistent with the requirements of the applicable Governmental Authority or Emergency Service Provider.

20.6 Public Use

- (a) DB Co shall have no right to grant to the general public the right to use either the New City Infrastructure or the New MTO Infrastructure. It shall be the right of the City to grant the right of use to the general public to the New City Infrastructure. It shall be the right of the MTO to grant the right of use to the general public to the New MTO Infrastructure.

- (b) Except as otherwise expressly provided in this Project Agreement, DB Co shall not have any claim whatsoever against the City, any City Party, any Emergency Service Providers or any other Governmental Authority for, or in respect of any lane or ramp closure or diversion or any track closure or diversion, including any such closure or diversion as a result of the exercise of any other rights or powers or the discharge of any other duties or functions by any such authority, affecting all or any part of the Lands, the New City Infrastructure or the New MTO Infrastructure, at any time.

21. ENVIRONMENTAL REQUIREMENTS

21.1 [Intentionally Deleted]

21.2 Environmental Requirements

- (a) DB Co and the City shall comply with the provisions of Schedule 17 – Environmental Obligations.

21.3 [Intentionally Deleted]

22. INDEPENDENT CERTIFIER

22.1 Appointment

- (a) On or prior to Financial Close, the Parties shall appoint an independent and suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 – Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 22.7(b).
- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and DB Co shall ensure that no DB Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

22.2 Role of Independent Certifier

- (a) The general role, obligations and functions of the Independent Certifier are described in Schedule 6 – Independent Certifier Agreement.

22.3 Changes to Terms of Appointment

- (a) Neither the City nor DB Co shall without the other's prior written approval:
 - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
 - (ii) vary the terms of the Independent Certifier Agreement or the services performed or to be performed by the Independent Certifier.

- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

22.4 Right to Change Appointment

- (a) The Parties agree that the Independent Certifier shall not provide any services or reports or other information to DB Co, the Lenders, the DB Co Parties or any other person other than pursuant to the performance of the functions of the Independent Certifier under this Project Agreement unless agreed to in writing by the Parties. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days' Notice to the Independent Certifier. If such Notice is given, then, pursuant to Section 22.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 days' Notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

22.5 Cooperation

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and the Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

22.6 Payment of Independent Certifier and Systems Integration Verifier

- (a) DB Co and the City shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.
- (b) DB Co and the City shall share equally the responsibility for the payment of all fees and costs of the Systems Integration Verifier.

22.7 Replacement

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed by the Parties, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within five Business Days after the termination of the original Independent Certifier's appointment, then a replacement Independent Certifier shall be chosen as follows:
 - (i) each Party shall, within five Business Days thereafter, select three suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide Notice thereof to the other Party, with a ranking of preference for replacements;
 - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding

together the ordinal rank assigned by the Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and

- (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

23. INTENTIONALLY DELETED

24. INTENTIONALLY DELETED

25. COMMISSIONING AND COMPLETION

25.1 Commissioning Activities

- (a) DB Co shall perform all,
 - (i) East DB Co Commissioning pursuant to the East Testing & Commissioning Plan;
 - (ii) West DB Co Commissioning pursuant to the West Testing & Commissioning Plan;
 - (iii) Highway DB Co Commissioning pursuant to the Highway Testing & Commissioning Plan; and
 - (iv) Remaining Works DB Co Commissioning pursuant to the Remaining Works Testing & Commissioning Plan.

25.2 Testing & Commissioning Program

- (a) [Not used]
- (b) The Testing & Commissioning Program shall, at a minimum:
 - (i) describe the requirements, and the timing and sequence of such requirements, necessary for, as applicable:
 - (A) the East DB Co Commissioning to achieve East Substantial Completion on or before the East Scheduled Substantial Completion Date, and East Final Completion on or before the East Scheduled Final Completion Date;
 - (B) the West DB Co Commissioning to achieve West Substantial Completion on or before the West Scheduled Substantial Completion Date, and West Final Completion on or before the West Scheduled Final Completion Date;
 - (C) the Highway DB Co Commissioning to achieve each Handover on or before the West Scheduled Substantial Completion Date; and
 - (D) the Remaining Works DB Co Commissioning to achieve completion of the Remaining Works on or before the West Final Completion Date,

as the case may be;

- (ii) comply with all requirements of the Schedule 14 – Testing & Commissioning;
 - (iii) include the names of the individuals or companies proposed to perform the applicable DB Co Commissioning;
 - (iv) include a schedule of each of the applicable DB Co Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
 - (v) include a schedule of meetings to be held between the Parties to coordinate the performance of the applicable DB Co Commissioning; and
 - (vi) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Testing & Commissioning Program or Applicable Law.
- (c) The City shall provide DB Co with comments on each draft Testing & Commissioning Program in accordance with the procedures contemplated by Schedule 10 – Review Procedure, and DB Co shall revise each draft Testing & Commissioning Program to the extent contemplated by Schedule 10 – Review Procedure within 30 days after receipt of any comments from the City.

25.3 DB Co Commissioning

- (a) DB Co shall, in accordance with Schedule 14 – Testing & Commissioning, invite the Independent Certifier and the City Representative to witness, and to comment on, each aspect of each DB Co Commissioning and DB Co shall provide all information that the Independent Certifier and the City Representative may reasonably require in relation thereto, including:
- (i) tests proposed;
 - (ii) test methodology; and
 - (iii) expected test results.

25.4 Substantial Completion Certificate

- (a) DB Co shall give the Independent Certifier and the City Representative at least 10 Business Days' Notice prior to the date upon which DB Co anticipates delivering each of the East Substantial Completion Notice and West Substantial Completion Notice.
- (b) DB Co shall give the Independent Certifier and the City Representative Notice upon the satisfaction of all requirements for,
- (i) East Substantial Completion (the “**East Substantial Completion Notice**”), describing, in reasonable detail, the satisfaction of the requirements for East Substantial Completion, together with DB Co’s opinion as to whether the conditions for issuance of the East Substantial Completion Certificate have been satisfied; and

- (ii) West Substantial Completion (the “**West Substantial Completion Notice**”), describing, in reasonable detail, the satisfaction of the requirements for West Substantial Completion, together with DB Co’s opinion as to whether the conditions for issuance of the West Substantial Completion Certificate have been satisfied,

(each a “**Substantial Completion Notice**”).

- (c) For the purposes of determining each applicable Substantial Completion, and for the purposes of determining substantial performance in accordance with Section 2(2) of the CA, the Parties have agreed not to expeditiously complete any Remaining Works until after West Substantial Completion.

The Parties have agreed that the price of the services or materials to be supplied, and required, to complete any Remaining Works shall be deducted from the total Cost of Works in determining substantial performance. For greater certainty, completion of the Remaining Works shall be a requirement for achieving West Final Completion.

- (d) The City shall, within five Business Days after receipt of a,
 - (i) East Substantial Completion Notice, provide the Independent Certifier and DB Co with the City’s opinion as to whether the conditions for issuance of an East Substantial Completion Certificate has been satisfied and, if applicable, any reasons as to why they consider that the East Substantial Completion Certificate should not be issued; and
 - (ii) West Substantial Completion Notice, provide the Independent Certifier and DB Co with the City’s opinion as to whether the conditions for issuance of an West Substantial Completion Certificate has been satisfied and, if applicable, any reasons as to why they consider that the West Substantial Completion Certificate should not be issued.
- (e) Within five Business Days after DB Co’s receipt of the City’s opinion pursuant to Section 25.4(d), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of each Substantial Completion Certificate have been satisfied, having regard for the opinions of both DB Co and the City, to determine whether any Minor Deficiencies exist, and to issue to the City and to DB Co either:
 - (i) the relevant Substantial Completion Certificate confirming the date of issue as the Substantial Completion Date and setting out the Minor Deficiencies List (if applicable) in accordance with Section 25.10; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by DB Co to satisfy the conditions for issuance of a Substantial Completion Certificate.
- (f) Where the Independent Certifier has issued a report in accordance with Section 25.4(e)(ii) and DB Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, DB Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the City Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;

- (ii) the schedule for completion of all such rectification actions; and
- (iii) any additional DB Co Commissioning that needs to be undertaken as a result of the rectification actions,

and DB Co shall perform all such additional rectification actions and DB Co Commissioning in a timely manner. Upon completion thereof, DB Co may give a further Substantial Completion Notice and Sections 25.4(c) to (f), inclusive, shall be repeated until the relevant Substantial Completion Certificate has been issued.

- (g) The Independent Certifier's decision to issue or not to issue a Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the applicable Substantial Completion Payment Date, and a Dispute in relation to such Substantial Completion Payment Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Schedule 27 – Dispute Resolution Procedure.
- (h) In respect of the East Works, DB Co shall provide As-Built Drawings, Record Drawings and specifications, Design Data and Shop Drawings as soon as possible and in any event no later than 60 days after the East Substantial Completion Date.
- (i) In respect of the West Works other than Highway Works, DB Co shall provide As-Built Drawings, Record Drawings and specifications, Design Data and Shop Drawings as soon as possible and in any event no later than 60 days after the West Substantial Completion Date.
- (j) In respect of the Highway Works, DB Co shall provide As-Built Drawings, Record Drawings and specifications, Design Data and Shop Drawings as soon as possible and in any event no later than 60 days after the applicable Handover.

25.5 Countdown Notices, Failure to Achieve Substantial Completion and Liquidated Damages

- (a) DB Co shall deliver a Notice (each, a “**Initial Countdown Notice**”) to the City and the Independent Certifier specifying the date on which DB Co anticipates that,
 - (i) East Substantial Completion will be achieved (the “**East Anticipated Substantial Completion Date**”, such Countdown Notice, an “**East Initial Countdown Notice**”); and
 - (ii) West Substantial Completion will be achieved (the “**West Anticipated Substantial Completion Date**”, such Countdown Notice, a “**West Initial Countdown Notice**”).

An Initial Countdown Notice shall be delivered not less than 180 days prior to the applicable Anticipated Substantial Completion Date.

- (b) In accordance with Section 7 of Schedule 12 – Works Schedule Requirements, the:
 - (i) East Anticipated Substantial Completion Date shall not be earlier than the East Scheduled Substantial Completion Date; and

- (ii) West Anticipated Substantial Completion Date shall not be earlier than the West Scheduled Substantial Completion Date,

without the prior written consent of the City, in its sole discretion.
- (c) [Not used]
- (d) In the event that DB Co has not delivered an East Initial Countdown Notice to the City in accordance with the requirements of Section 25.5(a), then DB Co shall,
 - (i) within 3 Business Days after the date that the East Initial Countdown Notice was to have been delivered to the City, pay to the City the sum of \$[REDACTED] as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co's failure to deliver the East Initial Countdown Notice in a timely manner; and
 - (ii) pay to the City the additional sum of \$[REDACTED] per calendar day as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co's failure to deliver such Notice for each day after the date that the East Initial Countdown Notice was to have been delivered to the City in accordance with the requirements of Section 25.5(a), until and including the date such Notice is delivered.
- (e) In the event that DB Co has not provided a West Initial Countdown Notice to the City in accordance with the requirements of Section 25.5(a), then DB Co shall,
 - (i) within 3 Business Days after the date that the West Initial Countdown Notice was to have been delivered to the City, pay to the City the sum of \$[REDACTED] as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co's failure to deliver the West Initial Countdown Notice in a timely manner; and
 - (ii) pay to the City the additional sum of \$[REDACTED] per calendar day as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co's failure to deliver such Notice for each day after the date that the West Initial Countdown Notice was to have been delivered to the City in accordance with the requirements of Section 25.5(a) until and including the date such Notice is delivered.
- (f) [Not used]
- (g) If an East Initial Countdown Notice has been delivered to the City and DB Co subsequently determines that East Substantial Completion will not be achieved on or before the East Anticipated Substantial Completion Date established by such East Initial Countdown Notice, DB Co shall:
 - (i) forthwith issue a subsequent Notice (an "**East Subsequent Notice**") to the City establishing a revised date by which DB Co expects to achieve East Substantial Completion (the "**East Revised Substantial Completion Date**"), which East Revised Substantial Completion Date shall be no earlier than,
 - (A) the East Anticipated Substantial Completion Date established by the East Initial Countdown Notice, and

- (B) 15 days after the delivery of such East Subsequent Notice;
- (ii) pay to the City, as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co's failure to achieve East Substantial Completion by the East Anticipated Substantial Completion Date established as aforesaid, the following amount:
 - (A) if the East Subsequent Notice is delivered between 1 and 29 days after the delivery of the East Initial Countdown Notice, the sum of **[\$[REDACTED]]**;
 - (B) if the East Subsequent Notice is delivered between 30 and 59 days after the delivery of the East Initial Countdown Notice, the sum of **[\$[REDACTED]]**;
 - (C) if the East Subsequent Notice is delivered between 60 and 89 days after the delivery of the East Initial Countdown Notice, the sum of **[\$[REDACTED]]**;
 - (D) if the East Subsequent Notice is delivered between 90 and 119 days after the delivery of the East Initial Countdown Notice, the sum of **[\$[REDACTED]]**;
 - (E) if the East Subsequent Notice is delivered between 120 and 149 days after the delivery of the East Initial Countdown Notice, the sum of **[\$[REDACTED]]**; or
 - (F) if the East Subsequent Notice is delivered later than 149 days after the delivery of the East Initial Countdown Notice, the sum of **[\$[REDACTED]]**.
- (h) If a West Initial Countdown Notice has been delivered to the City and DB Co subsequently determines that West Substantial Completion will not be achieved on or before the West Anticipated Substantial Completion Date established by such West Initial Countdown Notice, DB Co shall:
 - (i) forthwith issue a subsequent Notice (a "**West Subsequent Notice**") to the City establishing a revised date by which DB Co expects to achieve West Substantial Completion (the "**West Revised Substantial Completion Date**"), which West Revised Substantial Completion Date shall be no earlier than,
 - (A) the West Anticipated Substantial Completion Date established by the West Initial Countdown Notice, and
 - (B) 15 days after the delivery of such West Subsequent Notice;
 - (ii) pay to the City, as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co's failure to achieve West Substantial Completion by the West Anticipated Substantial Completion Date established as aforesaid, the following amount:
 - (A) if the West Subsequent Notice is delivered between 1 and 29 days after the delivery of the West Initial Countdown Notice, the sum of **[\$[REDACTED]]**;
 - (B) if the West Subsequent Notice is delivered between 30 and 59 days after the delivery of the West Initial Countdown Notice, the sum of **[\$[REDACTED]]**;

- (C) if the West Subsequent Notice is delivered between 60 and 89 days after the delivery of the West Initial Countdown Notice, the sum of \$[REDACTED];
 - (D) if the West Subsequent Notice is delivered between 90 and 119 days after the delivery of the West Initial Countdown Notice, the sum of \$[REDACTED];
 - (E) if the West Subsequent Notice is delivered between 120 and 149 days after the delivery of the West Initial Countdown Notice, the sum of \$[REDACTED]; or
 - (F) if the West Subsequent Notice is delivered later than 149 days after the delivery of the West Initial Countdown Notice, the sum of \$[REDACTED].
- (i) [Not used]
- (j) In the event that DB Co fails to achieve East Substantial Completion by the East Anticipated Substantial Completion Date without having delivered to the City an East Subsequent Notice, or in the event that DB Co has delivered to the City an East Subsequent Notice establishing an East Revised Substantial Completion Date and DB Co fails to achieve East Substantial Completion by such East Revised Substantial Completion Date, without having delivered a further East Subsequent Notice, in either case, DB Co shall:
- (i) forthwith issue an East Subsequent Notice to the City establishing a further revised date by which DB Co expects to achieve East Substantial Completion (the “**East Further Revised Substantial Completion Date**”), which East Further Revised Substantial Completion Date shall be no earlier than 15 days after the delivery of such East Subsequent Notice;
 - (ii) within 3 Business Days after the East Anticipated Substantial Completion Date or the East Revised Substantial Completion Date, as the case may be, pay to the City the amount of \$[REDACTED] as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co’s failure to achieve East Substantial Completion and deliver notice thereof in a timely manner;
 - (iii) if the East Subsequent Notice in subparagraph 25.5(j)(i) has not been delivered by DB Co, pay to the City the additional sum of \$[REDACTED] per calendar day for each day after the East Anticipated Substantial Completion Date or the East Revised Substantial Completion Date, as the case may be, that such East Subsequent Notice in respect of the East Further Revised Substantial Completion Date has not been delivered to the City, as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co’s failure to deliver such notice.
- (k) In the event that DB Co fails to achieve West Substantial Completion by the West Anticipated Substantial Completion Date without having delivered to the City a West Subsequent Notice, or in the event that DB Co has delivered to the City a West Subsequent Notice establishing a West Revised Substantial Completion Date and DB Co fails to achieve West Substantial Completion by such West Revised Substantial Completion Date, without having delivered a further West Subsequent Notice, in either case, DB Co shall:

- (i) forthwith issue a West Subsequent Notice to the City establishing a further revised date by which DB Co expects to achieve West Substantial Completion (the “**West Further Revised Substantial Completion Date**”), which West Further Revised Substantial Completion Date shall be no earlier than 15 days after the delivery of such West Subsequent Notice;
 - (ii) within 3 Business Days after the West Anticipated Substantial Completion Date or the West Revised Substantial Completion Date, as the case may be, pay to the City the amount of **[\$[REDACTED]]** as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co’s failure to achieve West Substantial Completion and deliver notice thereof in a timely manner;
 - (iii) if the West Subsequent Notice in subparagraph 25.5(k)(j)(i) has not been delivered by DB Co, pay to the City the additional sum of **[\$[REDACTED]]** per calendar day for each day after the West Anticipated Substantial Completion Date or the West Revised Substantial Completion Date, as the case may be, that such West Subsequent Notice in respect of the West Further Revised Substantial Completion Date has not been delivered to the City, as liquidated damages in respect of damages suffered and costs incurred by the City related to DB Co’s failure to deliver such notice.
- (l) Notwithstanding the forgoing provisions of this Section 25.5, provided DB Co has complied with, and exercised all commercially reasonable efforts to enforce, the scheduling and completion provisions in the Nominated Signalling Subcontract, liquidated damages shall not accrue under this Section 25.5 with respect to any failure to achieve Substantial Completion by the Anticipated Substantial Completion Date or Revised Substantial Completion Date, as the case may be, that is caused solely by the failure of the Nominated Signalling Subcontractor to perform the Nominated Signalling Subcontractor Works in accordance with the Works Schedules to the extent such failure delays the Critical Path.
- (m) The Parties agree that the liquidated damages set out in this Section 25.5 are not a penalty but represent a genuine and reasonable pre-estimate of the damages that will be suffered by the City related to DB Co’s failure to comply with and observe the provisions of this Section 25.5.
- (n) DB Co acknowledges and agrees that all liquidated damages set out in this Section 25.5 shall be payable whether or not the City incurs or mitigates these damages, and that the City shall have no obligation to mitigate these damages. DB Co further agrees that it is, and shall be, estopped from alleging that any liquidated damages set out in this Section 25.5 are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages were not incurred.
- (o) Subject to Section 25.5(p), unless otherwise specified herein, liquidated damages that accrue under this Section 25.5 shall become due and payable from time to time upon the City giving Notice to DB Co. Any such Notice shall specify the amount of liquidated damages that have accrued and are payable by DB Co to the City as of the date of such Notice. If such liquidated damages are not paid by DB Co within 10 Business Days from the date of such Notice, the City may recover any such liquidated damages due by DB Co by setting off such amounts from any amounts due or owing by the City to DB Co hereunder, or by drawing down the corresponding amount from any outstanding letters of credit, as applicable, in each case as required by the City, acting in its discretion. Failure by the City to provide a Notice to DB Co under this Section

25.5(o) shall not constitute a waiver of the City's right to claim, or otherwise release DB Co from liability for, all liquidated damages under this Section 25.5 at any time.

- (p) In the event that there is a Dispute concerning Substantial Completion and such Dispute is ongoing, the City shall not be entitled to payment of related liquidated damages pursuant to this Section 25.5 unless and until such Dispute is resolved in accordance with the Dispute Resolution Procedure outlined in Schedule 27 – Dispute Resolution Procedure and, if resolved in favour of the City, the provisions respecting liquidated damages contained in this Section 25.5 shall apply with retroactive effect, except that there shall be added to the amount payable by DB Co on account of liquidated damages, interest at the rate of **[REDACTED]** percent per annum from the date the liquidated damages were required to be paid in the absence of the Dispute to the date of payment.

25.6 Operations & Maintenance Manuals

- (a) DB Co shall prepare and deliver to the City draft copies of all necessary operations & maintenance manuals for the New City Infrastructure and the New MTO Infrastructure in the format set out in the Output Specifications no later than 6 months prior to each of the East Substantial Completion Date and West Substantial Completion Date, as applicable.

25.7 Maintenance Instructions

- (a) No later than 30 days prior to each Substantial Completion Date, DB Co shall prepare and deliver to the City maintenance data in the format set out in the Output Specifications which is compatible with the City's computerized maintenance management system (CMMS). The maintenance data shall detail all required planned activities for the applicable portion of the Works prescribed by the applicable operation and maintenance manuals and Good Industry Practice, including:
- (i) structural inspection procedures, identifying all components of the Works to be inspected on a regular basis and the recommended frequency of such inspections; and
 - (ii) preventative maintenance activities.
- (b) The provided maintenance data shall be subject to the review and approval of the City, acting reasonably. Following the City's approval of such maintenance data, the City shall upload it into the CMMS.

25.8 [Intentionally Deleted]

25.9 [Intentionally Deleted]

25.10 Minor Deficiencies

- (a) In the event that any Minor Deficiencies exist when DB Co gives an East Substantial Completion Notice, the Independent Certifier, in consultation with DB Co and the City, shall prepare a list of all Minor Deficiencies (the "**East Minor Deficiencies List**") in respect of the East Works (such Minor Deficiencies, the "**East Minor Deficiencies**") identified at that time and an estimate of the cost for the City and the time for DB Co, to complete and rectify such East Minor Deficiencies. The City may withhold from the East Substantial Completion Payment a holdback amount that is

[REDACTED]% of the amount estimated by the Independent Certifier for the City, to complete and rectify all such East Minor Deficiencies identified on the East Minor Deficiencies List (the “**East Completion Holdback**”), which holdback shall be held in an interest bearing account.

- (b) In the event that any Minor Deficiencies exist when DB Co gives a West Substantial Completion Notice, the Independent Certifier, in consultation with DB Co and the City, shall prepare a list of all Minor Deficiencies (the “**West Minor Deficiencies List**”) in respect of the West Works (such Minor Deficiencies, the “**West Minor Deficiencies**”) identified at that time and an estimate of the cost for the City and the time for DB Co, to complete and rectify such West Minor Deficiencies. The City may withhold from the West Substantial Completion Payment a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for the City, to complete and rectify all such West Minor Deficiencies identified on the West Minor Deficiencies List (the “**West Completion Holdback**”), which holdback shall be held in an interest bearing account.
- (c) [Not used]
- (d) Each Minor Deficiencies List will contain the schedule for the completion and rectification of the relevant Minor Deficiencies. In determining the relevant time for rectifying such Minor Deficiencies, DB Co shall schedule the completion and rectification of Minor Deficiencies so as to,
 - (i) comply with the Traffic and Transit Management Plan, the Construction Access Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in Schedule 15 – Output Specifications; and
 - (ii) minimize, to the greatest extent reasonably possible,
 - (A) any disruption of the Works or restrictions or other impairment of the public’s use and enjoyment of the New City Infrastructure, the New MTO Infrastructure, the Existing Infrastructure, the Stage 1 Connection Infrastructure, or any portion thereof; and
 - (B) any disruption of the operations of the City, any City Party, any Governmental Authority, any Other Contractor, RTG and RTG Parties, including the performance of the Governmental Activities, the Other Works, and RTG Works.
- (e) The Independent Certifier must prepare the East Minor Deficiencies List in relation to the East Substantial Completion Notice as soon as reasonably practicable, and, in any event, before the East Substantial Completion Certificate is issued, but shall not withhold the East Substantial Completion Certificate by reason solely that there are East Minor Deficiencies.
- (f) The Independent Certifier must prepare the West Minor Deficiencies List in relation to the West Substantial Completion Notice as soon as reasonably practicable, and, in any event, before the West Substantial Completion Certificate is issued, but shall not withhold the West Substantial Completion Certificate by reason solely that there are West Minor Deficiencies.
- (g) [Not used]

- (h) No later than 20 Business Days prior to the Anticipated Final Completion Date, the City may direct the Independent Certifier to amend, in consultation with DB Co and the City, a Minor Deficiencies List to include a list of any and all Minor Deficiencies that were identified after the preparation of, or not included in, a Minor Deficiencies List pursuant to Section 25.10(a) to 25.10(b). The Independent Certifier shall prepare the amended Minor Deficiencies List as soon as reasonably practicable and, in any event, within 10 Business Days after such direction given by the City. The amended Minor Deficiencies List shall, following its preparation, be deemed to be the Minor Deficiencies List for the purposes of this Project Agreement, including, without limitation, for the purposes of Sections 25.10 to 25.11 inclusive. For clarity, the amount of the East Completion Holdback or West Completion Holdback, as the case may be, shall not be affected by an amended Minor Deficiencies List.
- (i) Where the Independent Certifier has been directed by the City to amend a Minor Deficiencies List pursuant to Section 25.10(e) to 25.10(f), the Independent Certifier shall specify a commercially reasonable completion and rectification time for any newly added Minor Deficiencies.
- (j) The City may, in its sole discretion, waive any requirement for East Substantial Completion or West Substantial Completion, as the case may be, and the failure to meet any such requirement shall constitute a Minor Deficiency.
- (k) As an alternative to and in substitution for the withholding permitted by each of Sections 25.10(a) and 25.10(b), DB Co may, on or prior to the date on which each relevant Substantial Completion Payment is to be made to DB Co, provide a bond or letter of credit in favour of the City in an amount equal to the relevant Completion Holdback, in a form and from a surety or bank, as applicable, acceptable to the City, which letter of credit will be returned by the City to DB Co on the date that the relevant Completion Holdback would otherwise have been finally released to DB Co by the City. The City shall be entitled to draw against such letters of credit any such amounts as would otherwise be deducted from the applicable Completion Holdback in accordance with Section 25.12(a).
- (l) The Independent Certifier, in consultation with DB Co and the City, shall prepare a list of all Minor Deficiencies Nominated Signalling Subcontractor Works and an estimate of the cost for the City and the time for DB Co, to complete and rectify such Minor Deficiencies Nominated Signalling Subcontractor Works and such Minor Deficiencies Nominated Signalling Subcontractor Works shall be managed in accordance with the Nominated Signalling Subcontract.

25.11 Completion and Rectification of Minor Deficiencies

- (a) DB Co shall, in consultation with the City Representative and so as to,
 - (i) comply with the Traffic and Transit Management Plan, the Construction Access Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in Schedule 15 – Output Specifications; and
 - (ii) minimize, to the greatest extent reasonably possible,

- (A) any disruption of the Works or restrictions or other impairment of the public's use and enjoyment of the New City Infrastructure, the New MTO Infrastructure, or any portion thereof; and
- (B) any disruption of the operations of the City, any City Party, any Governmental Authority, any Other Contractor, RTG and RTG Parties, including the performance of the Governmental Activities, the Other Works, and RTG Works,

complete and rectify all Minor Deficiencies:

- (iii) within 120 days after the issuance of a Minor Deficiencies List pursuant to Section 25.10 for all Minor Deficiencies where no time for completion and rectification has been specified by the Independent Certifier; or
 - (iv) within the time for completion and rectification of a Minor Deficiency where such a time was specified by the Independent Certifier in the Minor Deficiencies List.
- (b) DB Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the New City Infrastructure, the New MTO Infrastructure, the Existing Infrastructure, the Stage 1 Connection Infrastructure, or any portion thereof and to ensure compliance with the Construction Access Management Plan, the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in Schedule 15 – Output Specifications.
 - (c) Upon completion and rectification of East Minor Deficiencies, as confirmed by the Independent Certifier in consultation with the City and DB Co for each calendar month after East Substantial Completion (including the month in which East Substantial Completion is achieved) until completion of all East Minor Deficiencies, the City shall release the amount of the East Completion Holdback related to such completed and rectified East Minor Deficiencies during such calendar month, within 5 Business Days of the conclusion of such calendar month. Notwithstanding the forgoing, payment of the final remaining amount of the East Completion Holdback shall be governed by Section 25.11(d).
 - (d) After the completion and rectification of all East Minor Deficiencies, as confirmed by the Independent Certifier in consultation with the City and DB Co:
 - (i) DB Co shall submit to the City the following documentation,
 - (A) DB Co's written request for the release of the remaining amount of East Completion Holdback, including a declaration that no written notice of lien arising in relation to the performance of the East Works has been received by it that has not been withdrawn by the lien claimant, or otherwise duly released, discharged or vacated in accordance with the CA;
 - (B) DB Co's Statutory Declaration CCDC 9A(2001); and
 - (C) DB Co's WSIB Certificate of Clearance; and

- (ii) Within two Business Days of DB Co submitting such documentation, the City shall release to DB Co the remaining amount of the East Completion Holdback (less any amounts deducted in accordance with Section 25.12(a), together with all interest accrued thereon and applicable HST). Where the City exercises its rights pursuant to 25.12(a), if the cost of such completion and rectification exceeds the amount of the East Completion Holdback and interest, then DB Co shall reimburse the City for all such excess cost.
- (e) Upon completion and rectification of West Minor Deficiencies, as confirmed by the Independent Certifier in consultation with the City and DB Co for each calendar month after West Substantial Completion (including the month in which West Substantial Completion is achieved) until completion of all West Minor Deficiencies, the City shall release the amount of the West Completion Holdback related to such completed and rectified West Minor Deficiencies during such calendar month, within 5 Business Days of the conclusion of such calendar month. Notwithstanding the forgoing, payment of the final remaining amount of the West Completion Holdback shall be governed by Section 25.11(f).
- (f) After the completion and rectification of all West Minor Deficiencies, as confirmed by the Independent Certifier in consultation with the City and DB Co:
 - (i) DB Co shall submit to the City the following documentation,
 - (A) DB Co's written request for the release of the remaining amount of West Completion Holdback, including a declaration that no written notice of lien arising in relation to the performance of the West Works has been received by it that has not been withdrawn by the lien claimant or otherwise duly released, discharged or vacated in accordance with the CA;
 - (B) DB Co's Statutory Declaration CCDC 9A(2001); and
 - (C) DB Co's WSIB Certificate of Clearance; and
 - (ii) Within two Business Days of DB Co submitting such documentation, the City shall release to DB Co the remaining amount of the West Completion Holdback (less any amounts deducted in accordance with Section 25.12(a), together with all interest accrued thereon and applicable HST). Where the City exercises its rights pursuant to 25.12(a), if the cost of such completion and rectification exceeds the amount of the West Completion Holdback and interest, then DB Co shall reimburse the City for all such excess cost.
- (g) [Not used]
- (h) [Not used]

25.12 Failure to Rectify Minor Deficiencies

- (a) If DB Co fails to complete and rectify any Minor Deficiency within the time for its completion and rectification specified in Section 25.11, the City may engage others to perform the work necessary to complete and rectify such Minor Deficiency at the risk and cost of DB Co, and the City may deduct such cost,

- (i) in respect of an East Minor Deficiency, from the East Completion Holdback and interest accrued thereon; and
- (ii) in respect of a West Minor Deficiency, from the West Completion Holdback and interest accrued thereon.

25.12A Remaining Works Minor Deficiencies

- (a) DB Co shall request the Independent Certifier to prepare a list of all Remaining Works Minor Deficiencies (the “**Remaining Works Minor Deficiencies List**”) by delivery of a written request (the “**Remaining Works Minor Deficiency Inspection Request**”) to the Independent Certifier. The Remaining Works Minor Deficiency Inspection Request shall be delivered not less than 60 days prior to the West Anticipated Final Completion Date. The Independent Certifier, in consultation with DB Co and the City, shall, within 10 Business Days of DB Co’s delivery of the Remaining Works Minor Deficiency Inspection Request prepare the Remaining Works Minor Deficiencies List which shall include an estimate of the time for completing and rectifying all Remaining Works Minor Deficiencies.
- (b) The Remaining Works Minor Deficiencies List will contain the schedule for the completion and rectification of all relevant Remaining Works Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, DB Co shall schedule the completion and rectification of any Remaining Works Minor Deficiencies so as to:
 - (i) comply with the Traffic and Transit Management Plan, the Construction Access Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in Schedule 15 – Output Specifications; and
 - (ii) minimize, to the greatest extent reasonably possible,
 - (A) any disruption of the applicable Works or restrictions or other impairment of the public’s use and enjoyment of the New City Infrastructure, the New MTO Infrastructure, the Existing Infrastructure, or any portion thereof; and
 - (B) any disruption of the operations of the City, any City Party, any Governmental Authority, any Other Contractor, RTG and RTG Parties, including the performance of the Governmental Activities, the Other Works, and RTG Works.

25.12B Rectification of Remaining Works Minor Deficiencies

- (a) DB Co shall, in consultation with the City Representative and so as to,
 - (i) comply with the Traffic and Transit Management Plan, the Construction Access Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in Schedule 15 – Output Specifications; and
 - (ii) minimize, to the greatest extent reasonably possible,

- (A) any disruption of the Works or restrictions or other impairment of the public's use and enjoyment of the New City Infrastructure, the New MTO Infrastructure, or any portion thereof; and
- (B) any disruption of the operations of the City, any City Party, any Governmental Authority, any Other Contractor, RTG and RTG Parties, including the performance of the Governmental Activities, the Other Works, and RTG Works,

complete and rectify all Remaining Works Minor Deficiencies within 60 days after the issuance of a Remaining Works Minor Deficiencies List or such other period as the Independent Certifier may specify in such Remaining Works Minor Deficiencies List, and in any event by no later than the West Scheduled Final Completion Date.

- (b) DB Co acknowledges and agrees that the completion and rectification of any Remaining Works Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the New City Infrastructure, the New MTO Infrastructure, the Existing Infrastructure or any portion thereof and to ensure compliance with the Construction Access Management Plan, the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in Schedule 15 – Output Specifications.

25.13 Final Completion Countdown Notice

- (a) DB Co shall deliver a Notice (each, a “**Final Completion Countdown Notice**”), to the City and the Independent Certifier specifying the:
 - (i) East Anticipated Final Completion Date (the “**East Final Completion Countdown Notice**”); and
 - (ii) West Anticipated Final Completion Date (the “**West Final Completion Countdown Notice**”).
- (b) Each Final Completion Countdown Notice shall be delivered not less than 60 days prior to the relevant Anticipated Final Completion Date pursuant to Section 25.13(a) above. For clarity, if DB Co fails to deliver the,
 - (i) East Final Completion Countdown Notice not less than 60 days prior to the East Scheduled Final Completion Date, the East Anticipated Final Completion Date shall be deemed to be the same date as the East Scheduled Final Completion Date; and
 - (ii) West Final Completion Countdown Notice not less than 60 days prior to the West Scheduled Final Completion Date, the West Anticipated Final Completion Date shall be deemed to be the same date as the West Scheduled Final Completion Date.

25.14 Final Completion Certificate

- (a) DB Co shall give the Independent Certifier and the City Representative at least 10 Business Days' Notice prior to the date upon which DB Co anticipates delivering a Final Completion Notice.

- (b) DB Co shall give the Independent Certifier and the City Representative Notice (the “**East Final Completion Notice**”) upon the satisfaction of all requirements for East Final Completion, which East Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for East Final Completion, including the completion and rectification of all Minor Deficiencies, together with DB Co’s opinion as to whether the conditions for issuance of the East Final Completion Certificate have been satisfied.
- (c) DB Co shall give the Independent Certifier and the City Representative Notice (the “**West Final Completion Notice**”) upon the satisfaction of all requirements for West Final Completion, which West Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for West Final Completion, including the completion and rectification of all Minor Deficiencies, together with DB Co’s opinion as to whether the conditions for issuance of the West Final Completion Certificate have been satisfied.
- (d) [Not used]
- (e) Each Final Completion Notice shall also include the following documentation:
 - (i) a declaration that no written notice of lien arising in relation to the performance of the applicable Works has been received by it that has not been withdrawn by the lien claimant or otherwise duly released, discharged or vacated in accordance with the CA;
 - (ii) DB Co’s Statutory Declaration CCDC 9A (2001);
 - (iii) DB Co’s WSIB Certificate of Clearance;
 - (iv) a written statement that the applicable Works have been performed to the requirements of the Ancillary Documents, itemizing approved changes in such Works, the Independent Certifier’s written instructions, and modifications required by Governmental Authorities; and
 - (v) a written description of the correction of Minor Deficiencies and, for the West Final Completion Notice, Remaining Works Minor Deficiencies, that are seasonal in nature and cannot be completed prior to the applicable Final Completion Date, if any, and the time for completion of such work as agreed between the City and DB Co, each acting reasonably.
- (f) The City shall, within five Business Days after receipt of a Final Completion Notice, provide the Independent Certifier and DB Co with the City’s opinion as to whether the conditions for issuance of a Final Completion Certificate have been satisfied and, if applicable, any reasons as to why they consider that the Final Completion Certificate should not be issued.
- (g) Within five Business Days after DB Co’s receipt of the City’s opinion pursuant to Section 25.14(f), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of a Final Completion Certificate have been satisfied, having regard for the opinions of both DB Co and the City, and to issue to the City and to DB Co either:
 - (i) such Final Completion Certificate confirming the date of issue as a Final Completion Date; or

- (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by DB Co to satisfy the conditions for issuance of a Final Completion Certificate, including any items on the Minor Deficiencies List and, in respect of West Final Completion, items on the Remaining Works Minor Deficiencies List, which remain outstanding.
- (h) Where the Independent Certifier has issued a report in accordance with Section 25.14(g)(ii) and DB Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, DB Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the City Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional DB Co Commissioning that needs to be undertaken as a result of the rectification actions,and DB Co shall perform all such additional rectification actions and DB Co Commissioning in a timely manner. Upon completion thereof, DB Co may give a further Final Completion Notice and Sections 25.14(f) to 25.14(h), inclusive, shall be repeated until a Final Completion Certificate has been issued.
- (i) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue a Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

25.15 Effect of Certificates/Use

- (a) The issue of a Substantial Completion Certificate or Final Completion Certificate, the commencement of use by the City or the public of any part of the New City Infrastructure or New MTO Infrastructure under the terms of this Project Agreement or the commencement of any Governmental Activities, shall, in no way:
 - (i) limit the obligations of DB Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List or of the amended Minor Deficiencies List described in Section 25.10(e) to 25.10(h); or
 - (ii) be construed as an approval by the City of the Works or the way in which they have been carried out.

25.16 Inspection, Commissioning and Handover of New MTO Infrastructure

- (a) DB Co acknowledges and agrees that New MTO Infrastructure will be inspected, commissioned and handed over to the MTO on a component by component basis and from time to time during the Construction Period.

- (b) For the purposes of this Section 25.16, the City may delegate the responsibility for carrying out interim inspections, final inspections, warranty inspections, and commissioning and Handover activities, on behalf of the City, to MTO, in respect of the New MTO Infrastructure by providing Notice to DB Co of any such delegation (any such notice referred to as a “**Notice of Delegation**”), and the City may, in its sole discretion, and at any time revise such delegation by Notice to DB Co. For clarity, the City may delegate the foregoing responsibility in respect of all or any component of any New MTO Infrastructure. DB Co acknowledges and agrees that, for the purposes of this Section 25.16, DB Co shall Handover all New MTO Infrastructure directly to the City unless the City has delivered to DB Co a Notice of Delegation in respect of New MTO Infrastructure, in which case, DB Co shall Handover such New MTO Infrastructure directly to MTO.
- (c) No later than 5 days prior to the anticipated completion of New MTO Infrastructure, DB Co shall provide Notice to the City or, where a Notice of Delegation has been provided to DB Co, DB Co shall provide Notice to MTO, of the date on which the New MTO Infrastructure will be completed and ready for inspection and testing. DB Co and the City, or DB Co and MTO (where a Notice of Delegation has been provided) shall carry out a joint inspection of such New MTO Infrastructure. Such joint inspection shall occur no later than 90 days after the date of completion of the New MTO Infrastructure. The inspection and testing of New MTO Infrastructure pursuant to this Section 25.16(c) shall follow the inspection and testing requirements set out in the Inspection and Test Plan. Such inspection, shall be for the purposes of:
 - (i) assessing whether the New MTO Infrastructure has been constructed in accordance with the Output Specifications and is otherwise in compliance with the requirements in the Project Agreement; and
 - (ii) identifying any defects or deficiencies to the New MTO Infrastructure that DB Co must correct, repair or restore before DB Co completes the commissioning of the New MTO Infrastructure before the Handover of the New MTO Infrastructure.
- (d) Prior to final inspection of New MTO Infrastructure, DB Co shall:
 - (i) prepare a record of the following, and submit it to the City for review in accordance with Schedule 10 – Review Procedure at least 30 Business Days before the final inspection:
 - (A) a list of the New MTO Infrastructure to be inspected;
 - (B) the tests, inspection methods and procedures to be used and performed and the standards that apply in respect of tests, inspection methods and procedures, which test and inspection shall follow the inspection and testing requirements set out in the Inspection and Test Plan;
 - (C) the scheduled date for testing and inspection of the applicable New MTO Infrastructure;
 - (D) a list of the names and employers of persons to represent DB Co and the City or, if a Notice of Delegation has been issued in respect of the relevant New MTO Infrastructure, a list of the names and employers of persons to represent DB Co and MTO, as the case may be, at the inspection; and

- (E) a list of existing systems that may be impacted by the tests and inspection.
- (ii) Ensure that:
 - (A) all defects and deficiencies that have been identified by the City or MTO, as applicable, during any interim inspections, have been rectified; and
 - (B) any damage to New MTO Infrastructure is repaired by DB Co in accordance with this Project Agreement.
- (e) DB Co shall prepare a record of each inspection carried out pursuant to Section 25.16(c) in inspection report format including: (i) a list of defects or deficiencies to New MTO Infrastructure identified during the inspection; and (ii) actions to be taken by DB Co to correct each defect or deficiency and to rectify the damage. DB Co shall submit the inspection reports to the City within three Business Days of each inspection for review in accordance with Schedule 10 – Review Procedure.
- (f) After the inspection of the New MTO Infrastructure pursuant to Section 25.16(c), DB Co shall make all arrangements in respect of the applicable New MTO Infrastructure to:
 - (i) correct all defects and deficiencies to the applicable New MTO Infrastructure and repair any damage to the applicable New MTO Infrastructure;
 - (ii) complete commissioning of the applicable New MTO Infrastructure in accordance with Schedule 14 – Testing & Commissioning;
 - (iii) comply with all requirements in respect of New MTO Infrastructure (set out in Schedule 14 – Testing & Commissioning) prior to, and as a pre-condition of Handover of New MTO Infrastructure;
 - (iv) complete Handover of the New MTO Infrastructure to the City or, where the City has delivered to DB Co a Notice of Delegation in respect of New MTO Infrastructure, complete Handover to MTO; and
 - (v) seek, receive, and document confirmation from the City or, where the City has delivered to DB Co a Notice of Delegation in respect of the applicable New MTO Infrastructure, seek, receive, and document confirmation from MTO, that such commissioning and Handover has been completed.
- (g) DB Co shall provide Notice to the City when any New MTO Infrastructure has been commissioned and has achieved Handover to the MTO. Such Notice to the City shall include the following:
 - (i) a clear identification of that portion or component of the New MTO Infrastructure that is the subject of the Notice;
 - (ii) the date of Handover of the applicable New MTO Infrastructure (as set out in the written confirmation required by Section 25.16(g)(iii)); and

- (iii) a written confirmation, signed by an authorized representative of the MTO that commissioning and Handover of the New MTO Infrastructure has been completed, including the confirmed date of Handover.
- (h) MTO and the City may, at any time and from time to time prior to West Final Completion, on providing 30 Business Days' Notice to DB Co, require a joint interim inspection of the New MTO Infrastructure to be carried out for the purposes of:
 - (i) assessing whether the New MTO Infrastructure has been constructed in accordance with the Output Specifications and is otherwise in compliance with the requirements of the Project Agreement; and
 - (ii) identifying any defects or deficiencies to the applicable New MTO Infrastructure.
- (i) Prior to any interim inspection of New MTO Infrastructure, DB Co shall prepare and submit to the City, a record of the following at least 20 Business Days before the applicable interim inspection, as the case may be:
 - (i) a list of the New MTO Infrastructure to be inspected;
 - (ii) the tests, inspection methods and procedures to be used and performed and the standards that apply in respect of tests, inspection methods and procedures, which tests and inspections shall follow the inspection and testing requirements set out in the Inspection and Test Plan;
 - (iii) the date for testing and inspection of the applicable New MTO Infrastructure which shall be no later than 45 Business Days after the Notice has been provided to DB Co pursuant to Section 25.16(h).
 - (iv) a list of the names and employers of persons to represent DB Co and the City or, if a Notice of Delegation has been issued in respect of the relevant New MTO Infrastructure, a list of the names and employers of persons to represent DB Co and MTO, at the inspection; and
 - (v) a list of existing systems that may be impacted by the tests and inspection.
- (j) DB Co shall prepare a record of each interim inspection carried out pursuant to Section 25.16(h) in inspection report format including: (i) a list of defects or deficiencies to the New MTO Infrastructure identified during the inspection, and (ii) actions to be taken by DB Co to correct each defect or deficiency and to rectify the damage. DB Co shall submit the inspection reports to the City for review within 3 Business Days of the inspection for review in accordance with Schedule 10 – Review Procedure.
- (k) DB Co shall arrange, schedule, and facilitate all inspections, and commissioning and Handover activities, in respect of the New MTO Infrastructure directly with the City, except where the City has provided Notice of Delegation to DB Co in respect of any of the New MTO Infrastructure, in which case the City and DB Co shall arrange, schedule, and facilitate all inspections, and commissioning and Handover activities with MTO. DB Co acknowledges and agrees that no joint inspection shall proceed unless, where a Notice of Delegation has been provided, the MTO is in attendance at such inspection, and DB Co shall, with such reasonable assistance from the

City as may be requested by DB Co, coordinate with and ensure MTO is in attendance at all joint inspections contemplated under this Section 25.16. DB Co shall report to the City on the status of all inspections, commissioning and Handover carried out in accordance with this Section 25.16 as part of the Works Report.

26. HUMAN RESOURCES

26.1 Admittance of Personnel

- (a) The City shall have the right to order the removal from the Lands, the New City Infrastructure or the New MTO Infrastructure of any person employed by (or acting on behalf of) DB Co, or any DB Co Party, whose presence, in the reasonable opinion of the City is likely to have an adverse effect on the Other Works or the Governmental Activities or who, in the reasonable opinion of the City is not a fit and proper person to be on the Lands, the New City Infrastructure or the New MTO Infrastructure for any reason, including a failure to comply with any the City policy or any immediate obligation of the City to ensure the safety and well-being of persons on the Lands, the New City Infrastructure and the New MTO Infrastructure.
- (b) Any action taken under this Section 26.1 shall promptly be confirmed by the City to DB Co and, for greater certainty, shall not relieve DB Co of any of its obligations under this Project Agreement.
- (c) Any decision of the City made pursuant to this Section 26.1 shall be final and conclusive.

26.2 Staff Competency

- (a) DB Co shall ensure that:
 - (i) there shall at all times be a sufficient number of persons employed or engaged by DB Co or any DB Co Party (including all relevant grades of supervisory staff) engaged in the performance of the Works with the requisite level of skill and experience to perform the Works in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by DB Co or any DB Co Party to complete the Works in accordance with the Works Schedule;
 - (ii) all persons employed or engaged by DB Co or any DB Co Party (including all relevant grades of supervisory staff) engaged in the performance of the Works receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements, Authority Requirements and the City HR Policy; and
 - (iii) it creates and maintains, and causes all DB Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by DB Co or any DB Co Party (including all relevant grades of supervisory staff) engaged in the performance of the Works to ensure the proper performance of this Project Agreement.

26.3 Notification of Convictions

- (a) DB Co (to the extent permitted by Applicable Law) shall, and shall cause such DB Co Party to, ensure that all potential employees (including, for greater certainty, permanent, temporary, full time and part time employees) and persons who may otherwise perform the Works:
 - (i) are questioned concerning Relevant Convictions; and
 - (ii) are required to complete and deliver to DB Co a criminal records search form.
- (b) To the extent permitted by Applicable Law, DB Co shall, and shall cause each DB Co Party to, ensure that no person who discloses any Relevant Conviction, or who is found to have any Relevant Conviction following the completion of a criminal records search, in either case of which DB Co or a DB Co Party is aware or ought to be aware, is allowed access to the Lands, the New City Infrastructure or the New MTO Infrastructure to perform any Works, without the prior written consent of the City, in its sole discretion.
- (c) To the extent permitted by Applicable Law, DB Co shall ensure that the City is notified as soon as possible, and kept advised at all times of, any person employed or engaged by DB Co or any DB Co Party in the provision of any of the Works who, subsequent to the commencement of such employment or engagement, (i) has been arrested or detained; (ii) receives a Relevant Conviction; or (iii) is charged with an offence that could lead to a Relevant Conviction (of which DB Co or a DB Co Party becomes aware or whose previous Relevant Convictions become known to DB Co or a DB Co Party). DB Co shall use commercially reasonable efforts to obtain, or to cause all DB Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to the City as contemplated in this Section 26.3.

26.4 Disciplinary Action

- (a) The City, acting reasonably, may notify DB Co of any DB Co or DB Co Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Lands or at work is otherwise considered by the City to be undesirable, to constitute a threat to the health and/or safety of any of the users of the Lands and/or System Users or which the City considers may potentially compromise (i) the City's reputation or integrity, or (ii) the nature of the public transit system in the City of Ottawa or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the City of Ottawa, the Province of Ontario or the Project. Upon investigation, DB Co may institute, or cause the relevant DB Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise the City in writing of the outcome of any disciplinary action taken in respect of such person.

26.5 Human Resources Policies

- (a) DB Co shall ensure that there are set up and maintained by it and by all DB Co Parties, human resources policies and procedures covering all relevant matters relating to the Works (including, for example, health and safety). DB Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirements, and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are directly issued to the City and all DB Co Parties.

26.6 Management Organizations

- (a) DB Co shall provide, and shall ensure that all DB Co Parties provide, to the City, as required to keep such information current, the names of the management teams responsible for the provision of the Works.

26.7 Governmental Authority

- (a) DB Co shall ensure that it and all DB Co Parties comply at all times with any regulations, policies or directions set by any Governmental Authority related to labour, employment and/or human resources.

27. THE CITY'S REMEDIAL RIGHTS

27.1 Exercise of Remedial Rights

- (a) The City may exercise all rights set out in this Section 27 at any time and from time to time if:
 - (i) the City, acting reasonably, considers that a breach by DB Co of any obligation under this Project Agreement, or any act or omission on the part of DB Co or any DB Co Party:
 - (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any System Users or City Party;
or
 - (B) does or can reasonably be expected to materially prejudice the performance of any Governmental Activities;
 - (C) may potentially compromise the City's reputation or integrity, or the nature of the public transit system in the City of Ottawa or the Province of Ontario, so as to affect public confidence in that system or the Project,

provided that:

- (D) in respect of a breach by DB Co of any obligation under this Project Agreement or any act or omission on the part of DB Co or any DB Co Party which can reasonably be expected to cause any of the consequences set out in Sections 27.1(a)(i)(A) and 27.1(a)(i)(B), the City shall not exercise its rights under this Section 27 unless DB Co has failed to cure the relevant breach, act or omission within 5 Business Days after Notice from the City or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, DB Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that DB Co shall not be entitled to a cure period if any of the consequences set out in Sections 27.1(a)(i)(A) and 27.1(a)(i)(B) actually occur; and
- (E) in respect of Section 27.1(a)(i)(C), the City shall not exercise its rights under this Section 27 unless DB Co has failed to cure the relevant breach, act or omission within 5 Business Days after Notice from the City or, if such

breach, act or omission cannot reasonably be cured within such 5 Business Day period, DB Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;

- (ii) DB Co has not caused the COR-Qualified Construction DB Co Party or the COR-Certified Construction DB Co Party, as the case may be, to perform its obligations with respect to its COR Certification or OHSAS 18001 Accreditation, as the case may be, in accordance with Section 11.25, or DB Co has not caused the COR-Qualified Construction DB Co Party or the COR-Certified Construction DB Co Party, as the case may be, to perform its obligations with respect to H&S Construction Inspections in accordance with Section 15.2, or to perform its obligations to rectify any non-compliance noted in any H&S Construction Inspection Report in accordance with Section 15.2(c);
- (iii) DB Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 11.26 or DB Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 11.26;
- (iv) DB Co has failed to comply with any written direction issued by or on behalf of the City in accordance with this Project Agreement.

27.2 Emergency

- (a) Notwithstanding that DB Co is not in breach of its obligations under this Project Agreement, the City may exercise all of the rights set out in this Section 27 at any time and from time to time if the City, acting reasonably, considers the circumstances to constitute an Emergency.

27.3 Rectification

- (a) Without prejudice to the City's rights under Section 36 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 27.1 or 27.2, the City may, by written Notice, require DB Co to take such steps as the City, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors or a limited suspension of the performance of the Works, and DB Co shall use commercially reasonable efforts to comply with the City's requirements as soon as reasonably practicable.
- (b) If the City gives Notice to DB Co pursuant to Section 27.3(a) and either:
 - (i) DB Co does not either confirm, within 5 Business Days after such Notice or such shorter period as is appropriate in the case of an Emergency that it is willing to take the steps required in such Notice or present an alternative plan to the City to mitigate, rectify and protect against such circumstances that the City may accept or reject acting reasonably; or
 - (ii) DB Co fails to take the steps required in such Notice or accepted alternative plan within such time as set out in such Notice or accepted alternative plan or within such longer time as the City, acting reasonably, shall think fit,

then the City may take such steps as it considers to be appropriate, acting reasonably, requiring the termination and replacement of Subcontractors, either themselves or by engaging others (including a third party) to take any such steps.

- (c) Notwithstanding the foregoing provisions of this Section 27.3, in the event of an Emergency, the Notice under Section 27.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and the City may, prior to DB Co's confirmation under Section 27.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

27.4 Costs and Expenses

- (a) Subject to the City's obligations pursuant to Sections 27.5 and 27.6:
 - (i) DB Co shall bear all costs and expenses incurred by DB Co in relation to the exercise of the City's rights pursuant to this Section 27; and
 - (ii) DB Co shall reimburse the City for all reasonable costs and expenses incurred by the City in relation to the exercise of the City's rights pursuant to this Section 27, including in relation to the City taking such steps, either itself or by engaging others (including a third party) to take any such steps as the City considers appropriate and as are in accordance with this Section 27.

27.5 Reimbursement Events

- (a) In this Section 27.5, a "**Reimbursement Event**" means:
 - (i) an act or omission of DB Co or any DB Co Party or a breach by DB Co or any DB Co Party of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by the City or a the City Party; or
 - (ii) an Emergency that is not caused or contributed to by an act or omission of DB Co or any DB Co Party or a breach by DB Co or any DB Co Party of any obligation under this Project Agreement.
- (b) If the City either takes steps itself or requires DB Co to take steps in accordance with this Section 27 as a result of a Reimbursement Event:
 - (i) the City shall reimburse DB Co for the reasonable costs and expenses incurred by DB Co in relation to the exercise of the City's rights pursuant to this Section 27 that would not otherwise have been incurred by DB Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) the City shall bear all costs and expenses incurred by the City in relation to the exercise of the City's rights pursuant to this Section 27.

27.6 Reimbursement if Improper Exercise of Rights

- (a) If the City exercises its rights pursuant to this Section 27, but the City was not entitled to do so, the City shall reimburse DB Co for the reasonable costs and expenses directly incurred by DB Co over and above those that would otherwise have been incurred by DB Co in the proper

performance of its obligations under this Project Agreement and that are directly and reasonably incurred by DB Co in complying with those written requirements of the City issued as a result of the City having exercised such rights.

- (b) DB Co acknowledges and agrees that DB Co has no right to require a determination of whether or not the City is entitled to exercise its rights pursuant to this Section 27 before taking any such action that the City may require and DB Co shall comply with all of the City's requirements. Only concurrently with or after complying with the City's requirements shall DB Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. No action taken by DB Co pursuant to any direction issued by the City under this Section 27 shall be considered an acceptance or affirmation of the City's entitlement to exercise its rights under this Section 27, and such action shall be without prejudice to DB Co's rights under this Project Agreement or under the Dispute Resolution Procedure.

28. RECORDS, INFORMATION AND AUDIT

28.1 Records Provisions

- (a) DB Co shall comply with Schedule 26 – Record Provisions.

28.2 Information and General Audit Rights

- (a) DB Co shall provide, and shall cause each Subcontractor to provide, to the City all information, reports, documents, records and the like, including as referred to in Schedule 26 – Record Provisions, in the possession of, or available to, DB Co as the City may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. DB Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor shall be available to DB Co and DB Co shall include relevant terms in all Subcontracts to this effect.
- (b) DB Co shall also provide to the City, and shall require each Subcontractor, including the Construction Contractor, to provide to the City (at the City's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 28.2(a) which subsequently come into the possession of, or become available to, DB Co or each Subcontractor, as the City may reasonably require from time to time to enable the City to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Lands, the New City Infrastructure and the New MTO Infrastructure, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) DB Co shall promptly after receipt provide the City with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Works, the Lands, the New City Infrastructure and the New MTO Infrastructure, and DB Co shall include relevant terms in all Subcontracts to this effect.
- (d) DB Co shall promptly notify the City of any actions, suits, proceedings, or investigations commenced, pending or threatened against DB Co or, to DB Co's knowledge, any Subcontractor

at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of DB Co or in any impairment of its ability to perform its obligations under this Project Agreement.

- (e) All information, reports, documents and records in the possession of, or available to, DB Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to the City hereunder, shall be subject and open to inspection and audit by the City at any time and from time to time, which inspection and audit shall take place during normal business hours and at DB Co's normal places of business unless the City and DB Co otherwise agree. The City shall also have the right to monitor and audit the performance of any and all parts of the Works wherever located, and DB Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of the City monitoring and auditing such parts of the Works, including providing them with access and copies (at the City's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works. Except as otherwise provided herein, all of the City's costs for the inspections, audits and monitoring shall be borne by the City.
- (f) In conducting an audit of DB Co under Section 28.2(e) or as otherwise provided under this Project Agreement, the City shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at the City's reasonable cost) of all books and records of DB Co required to be provided to or available to the City hereunder, upon reasonable Notice and at reasonable times. DB Co shall fully cooperate with the City and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and DB Co further agrees to promptly review and settle with the City all matters arising from such audits, including the refunding of monies to the City where applicable. At the reasonable request of the City's auditors, DB Co shall provide such information, reports, documents and records as the City's auditors may reasonably require, other than Sensitive Information.
- (g) The City's rights pursuant to this Section 28.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) The City's rights pursuant to this Section 28.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law. The City's right pursuant to this Section 28.2 may also be exercised by the Auditor General of Ontario, Her Majesty the Queen in right of Canada and the Auditor General of Canada without the requirement for further action on the part of the City.
- (i) Without limiting the generality of Section 28.2(a) and subject to Sections 42.1(a) and 42.3, in the event that the City is required to provide information, including financial information, in relation to the Project, to the Province for corporate or financial reporting purposes, DB Co shall provide such information to the City as the City may reasonably require in order to comply with its corporate or financial reporting obligations. DB Co acknowledges and agrees that such information may include Sensitive Information.

28.3 Lenders' Consultant Reports

- (a) DB Co shall cause the Lenders' Agent to cause, in accordance with Section 5(j) of Schedule 4 – Lenders' Direct Agreement, the Lenders' Consultant to provide the City a copy of any written assessment or report of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent.

29. COMMUNICATIONS

29.1 Communications

- (a) Each of the Parties shall comply with Schedule 18 – Communication and Stakeholder Engagement Obligations.

30. CHANGES IN LAW

30.1 Performance after Change in Law

- (a) Following any and all Changes in Law, DB Co shall perform the Works in accordance with the terms of this Project Agreement, including in compliance with Applicable Law.

30.2 Works Change in Law

- (a) On the occurrence of a Works Change in Law:
 - (i) either Party may give Notice to the other of the need for a Variation as a result of such Works Change in Law;
 - (ii) the Parties shall meet within 10 Business Days after such Notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days after this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) the City shall, within 10 Business Days after agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) DB Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
 - (B) DB Co shall be responsible for obtaining all Development Approvals and DB Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;

- (D) DB Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
- (E) DB Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Variation Procedure.

30.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to DB Co of performing the Works so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 30.3.
- (b) On the occurrence of a Relevant Change in Law:
 - (i) either Party may give Notice to the other of the need for a Variation as a result of such Relevant Change in Law;
 - (ii) the Parties shall meet within 10 Business Days after such Notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days after this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) the City shall, within 10 Business Days after agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) DB Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) DB Co shall be responsible for obtaining all Development Approvals and DB Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) DB Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;

- (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
- (F) any entitlement to compensation payable shall be in accordance with this Section 30.3, and any calculation of compensation shall take into consideration, inter alia:
 - (I) any failure by a Party to comply with Section 30.3(b)(iii)(E);
 - (II) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (III) any amount which DB Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) DB Co shall not be entitled to any payment or compensation or, except as provided in Section 32 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 30.3, and Section 33 shall be construed accordingly.

31. VARIATIONS

31.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations and any Small Works.
- (b) For greater certainty, DB Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of the City to DB Co or any DB Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
- (c) Without limiting DB Co's obligations pursuant to Section 11.10(a) and Schedule 22 – Variation Procedure, DB Co shall include in each Subcontract, and shall cause each DB Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires DB Co to minimize the cost and impact of Variations.

31.2 Innovation and Value Engineering

- (a) DB Co acknowledges that the City at all times desires to reduce the overall cost to the City of the Project, and DB Co agrees to cooperate, explore and work with the City in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by DB Co, DB Co may make a proposal (the “**Innovation Proposal**”) by Notice to the City.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
 - (i) any Variation Enquiry initiated by the City;
 - (ii) any Variation resulting from a Change in Law; or
 - (iii) any change to the City Activities.
- (d) The Innovation Proposal must:
 - (i) set out sufficient detail to enable the City to evaluate the Innovation Proposal in full;
 - (ii) specify DB Co’s reasons and justification for proposing the Innovation Proposal;
 - (iii) request the City to consult with DB Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes the City requires as a result;
 - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to DB Co and the City;
 - (v) indicate if there are any dates by which a decision by the City must be made;
 - (vi) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (vii) include such other information and documentation as may be reasonably requested by the City to fully evaluate and consider the Innovation Proposal.
- (e) The City shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
 - (i) the Innovation Proposal affects the quality of the Works, the New City Infrastructure, the New MTO Infrastructure, or the likelihood of successful completion of the Works;
 - (ii) the Innovation Proposal will benefit or interfere with the efficient operation of the New City Infrastructure, the New MTO Infrastructure or the performance of the City Activities;
 - (iii) the Innovation Proposal will interfere with the relationship between the City and third parties;

- (iv) the financial strength of DB Co is sufficient to deliver the changed Works;
 - (v) the residual value of the New City Infrastructure, or the New MTO Infrastructure is affected;
 - (vi) the Innovation Proposal materially affects the risks or costs to which the City is exposed; or
 - (vii) any other matter the City considers relevant.
- (f) The City may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) The City may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If the City accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by DB Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by DB Co, the Innovation Proposal causes or will cause the costs of DB Co and/or of a Subcontractor to decrease, the net savings in the costs of DB Co and/or the Subcontractor will be shared equally by DB Co and the City, and the City's share of the net savings shall, if the Parties agree, be reflected in a lump sum payment.
- (j) If an Innovation Proposal causes or will cause the costs of the City to decrease, the net savings in the costs of the City will be shared:
- (i) equally by DB Co and the City following the implementation of the Innovation Proposal until the Termination Date; and
 - (ii) thereafter, the City shall be entitled to the full benefit of the net savings in costs (if applicable),
- and DB Co's share of the net savings shall be reflected in a lump sum payment.

32. DELAY EVENTS

32.1 Definition

- (a) For the purposes of this Project Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that it affects the Works so as to cause a delay in achieving any Substantial Completion by the applicable Scheduled Substantial Completion Date, or a delay in achieving any Final Completion by the applicable Scheduled Final Completion Date:
- (i) the implementation of a Variation to the extent DB Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;

- (ii) subject to compliance by DB Co with the provisions of Section 11.12, damage, costs or delays from the execution of Additional Works on the Lands by Additional Contractors, as applicable, in the circumstances described in Section 11.12(f);
- (iii) a requirement that DB Co perform obligations under an Encumbrance pursuant to Section 17.2(c)(iii) or Section 17.2(d), which performance imposes costs or delays in the performance of the Works;
- (iv) any breach by the City of any of the City's obligations under this Project Agreement (including, subject to Section 32.2(o), any delay by the City in giving access to the Lands pursuant to Section 16.1, any obstruction of the rights afforded to DB Co under Section 16.1 or any delay by the City in carrying out its obligations set forth in Schedule 10 – Review Procedure), except to the extent that any such breach is caused, or contributed to, by DB Co or any DB Co Party;
- (v) a requirement pursuant to Section 18.2(g) for DB Co to perform any alteration, addition, Demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, Demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (vi) a requirement pursuant to Section 18.3(c)(ii)(A) or Section 18.3(d) for DB Co to perform any alteration, addition, Demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artifacts or other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, Demolition, extension or variation in the Works, would not otherwise be required under this Project Agreement;
- (vii) a requirement pursuant to Sections 18.4(b) or 18.4(c) for DB Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Species-at-Risk for which the City is responsible, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (viii) subject to and in accordance with Section 18.5(b), a requirement for DB Co to perform any alteration, addition, demolition, extension or variation in the Works, or other delay in performance of the Works, due to a deviation from the Stage 1 Connection Infrastructure Preliminary Report;
- (ix) an uncovering of the Works pursuant to Section 20.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the DB Co Proposal Extracts and the Design Data), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by the City in respect of the same or a similar component of the Works or subset of the Works;
- (x) a requirement pursuant to Section 13.1 of Schedule 27 – Dispute Resolution Procedure for DB Co to proceed in accordance with the direction of the City during the pendency of a Dispute, which Dispute is subsequently determined in DB Co's favour;

- (xi) a Relief Event;
- (xii) an event of Force Majeure;
- (xiii) a Relevant Change in Law;
- (xiv) a requirement for DB Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of unknown Utility Infrastructure or Mislocated Utility Infrastructure pursuant to Section 18.6, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement; or
- (xv) subject to compliance with Section 11.8(g), the City's failure to issue to DB Co a final determination in respect of a Listed DB Co PLAA as set out in and subject to Section 11.8(e),
- (xvi) damage, costs or delays caused by an act or omission of RTG or any RTG Party in the execution of the RTG Stage 1 PA Works or RTG City Party Works, in the circumstances described in Section 11.12(k);
- (xvii) changes to the terms, conditions or requirements of the Environmental Assessments (except to the extent resulting from any change by DB Co to the design of the Project or any act, omission or fault of DB Co or a DB Co Party);
- (xviii) a stop work order issued by a Governmental Authority in respect of the Works, provided that such order was not issued as a result of a Relief Event, an act of Force Majeure, or as a result of an act, omission or fault of DB Co or a DB Co Party;
- (xix) a Delay Event determined by the Adjudicator pursuant to Section 6.4(b) of Schedule 27 – Dispute Resolution Procedure;
- (xx) pursuant to an explicit provision in a permit, licence or approval granted by the City to a third party developer in respect of an Adjacent Property, that third party developer,
 - (A) constructs a physical barrier that prevents DB Co from carrying out the Works; or
 - (B) creates a significant physical impediment that prevents DB Co from carrying out the Works for a period greater than or equal to 30 consecutive days;
- (xxi) replacement or substitution of a prescribed item in accordance with Section 11.20 causes delay in the Works or increases the costs of the Works; or
- (xxii) in accordance with Section 11.7(a)(iv), compliance with any amendments made to any disclosed collective agreements or labour-related agreements, or any disclosed collective agreements or labour-related agreements entered into or disclosed to DB Co after Financial Close, adversely interferes with DB Co's ability to perform the Works or materially adversely affects DB Co's schedule for performing the Works,

- (xxiii) subject to and in accordance with Section 18.7, a requirement for DB Co to perform any alteration, addition, demolition, extension or variation in the Works, or other delay in performance of the Works, due to a defect, error or inaccuracy in the Stage 1 Systems Information;
- (xxiv) failure by a Category 1 Utility Company to perform its obligations, as set out in the Utility Baseline Report within the applicable time periods set out in the Utility Baseline Report, to the extent that such event does not arise (directly or indirectly) as a result of any act or omission of the DB Co or any DB Co Party. For clarity, for the purposes of determining whether a failure of a Category 1 Utility Company described in this Section 32.1(a)(xxiv) has caused a delay in achieving any Substantial Completion by the applicable Scheduled Substantial Completion Date, or a delay in achieving any Final Completion by the applicable Scheduled Final Completion Date, the Parties shall have regard to the cumulative effect of all failures by the Category 1 Utility Companies in accordance with this Section 32.1(a)(xxiv);
- (xxv) a defect in Major Existing Third Party Infrastructure that is the responsibility of the City pursuant to Section 18.8(a);
- (xxvi) subject to Section 3.1(a) of Part A of Schedule 34 – Mobility Matters and Section 3.1(a) of Part B of Schedule 34 – Mobility Matters, the City’s issuance of a DB Co Permit, Licence, Approval and Agreement that requires DB Co to meet more onerous lane opening or lane width requirements than those explicitly set out in Schedule 15-2 Part 7 Table 7-1.3; and
- (xxvii) any of the following event occurs in respect of the Nominated Signalling Subcontractor:
 - (A) any arrangement or composition with or for the benefit of creditors being entered into by or in relation to the Nominated Signalling Subcontractor pursuant to any insolvency law;
 - (B) a trustee, receiver, receiver and manager, interim receiver, liquidator, administrator or other custodian or other encumbrance holder taking possession of or being appointed over, or any distress, attachment, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Nominated Signalling Subcontractor;
 - (C) the Nominated Signalling Subcontractor ceases to carry on business in the normal course or fails to maintain or breaches any franchise, licence, authorisation or right necessary to conduct its business;
 - (D) the Nominated Signalling Subcontractor making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), the *Winding Up and Restructuring Act* (Canada) or any other applicable insolvency legislation or similar legislation in any jurisdiction (“Insolvency Legislation”), or any other type of insolvency proceedings being commenced by or against the Nominated Signalling Subcontractor under any insolvency

- legislation and, if commenced against the Nominated Signalling Subcontractor, not stayed, dismissed or otherwise remedied within thirty (30) days of its commencement;
- (E) a petition being filed (and not being contested in good faith using all reasonable efforts), or a resolution being passed or an order being made for the winding-up, liquidation, administration, dissolution or other similar proceeding of the Nominated Signalling Subcontractor;
 - (F) any legal proceedings are taken by any person (and not stayed within thirty (30) days of commencement) with a view to proposing (under any enactment or otherwise) any kind of composition, scheme of arrangement, compromise or arrangement involving the Nominated Signalling Subcontractor and its creditors generally (or any class of them); or
 - (G) any Governmental Authority or any person or entity acting or purporting to act under any Governmental Authority takes any action in order to condemn, seize or appropriate, or to assume custody or control of, the Nominated Signalling Subcontractor or of all or any substantial part of the assets of the Nominated Signalling Subcontractor or takes action to curtail the Nominated Signalling Subcontractor's authority in the overall conduct of its business or operations.
- (b) For clarity, in respect of Section 32.1(a)(xxiv), a failure by a Category 1 Utility Company to perform its obligations as set out in the Utility Baseline Report within the applicable time periods set out in the Utility Baseline Report shall not, in any event, be cause for a Delay Event unless DB Co has,
- (i) fully complied with its obligations pursuant to the applicable Utility Agreement and the Baseline Utility Report;
 - (ii) properly coordinated the work being performed by the applicable Category 1 Utility Company with the Works; and
 - (iii) provided sufficient access to Site to the applicable Category 1 Utility Company for the purposes of carrying out the Category 1 Utility Company's work.
- (c) For further clarity, Section 32.1(a)(xxiv) does not apply in respect of,
- (i) Category 1 Utility Companies in circumstances other than those specifically set out in the Utility Baseline Report;
 - (ii) failures of any Utility Companies that are not Category 1 Utility Companies including failures of such Utility Companies to perform in accordance with the applicable Utility Agreement; or
 - (iii) Works carried out by DB Co or DB Co Parties or goods or services provided by DB Co or DB Co Parties to the Utility Companies.

32.2 Consequences of a Delay Event

- (a) DB Co shall provide written Notice to the City Representative and the Independent Certifier within five Business Days after becoming aware of the occurrence of any event or circumstances described in Section 32.1(a)(ii), Section 32.1(a)(iii), Section 32.1(a)(iv), Section 32.1(a)(v), Section 32.1(a)(vi), Section 32.1(a)(vii), Section 32.1(a)(viii), Section 32.1(a)(ix), Section 32.1(a)(xiv), Section 32.1(a)(xv), Section 32.1(a)(xvi), Section 32.1(a)(xvii), Section 32.1(a)(xviii), Section 32.1(a)(xix), Section 32.1(a)(xx), Section 32.1(a)(xxi), Section 32.1(a)(xxii), Section 32.1(a)(xxiii), Section 32.1(a)(xxiv), Section 32.1(a)(xxv), Section 32.1(a)(xxvi) or Section 32.1(a)(xxvii) which, at the time of its occurrence, has caused, or is reasonably likely to cause, an entitlement under this Section 32, which Notice shall identify such event or circumstances and, to the extent of DB Co's knowledge at the time of such Notice, summarize the consequences and the nature of DB Co's claim.
- (b) DB Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such Notice under Section 32.2(a), provide further written details to the City Representative and the Independent Certifier which shall include, to the extent of DB Co's knowledge at such time:
 - (i) identification of the category of Delay Event on which DB Co's claim for relief is based;
 - (ii) details of the event or circumstances forming the basis of DB Co's notification under Section 32.2(a);
 - (iii) details of the contemporary records which DB Co shall thereafter maintain to substantiate any claim for extra time;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon Scheduled Substantial Completion Dates or Scheduled Final Completion Dates, including a Critical Path analysis of the event or circumstances indicating the impact upon Scheduled Substantial Completion Dates or Scheduled Final Completion Dates; and
 - (v) details of any measures that DB Co has adopted or proposes to adopt to mitigate the consequences of such claimed Delay Event.
- (c) As soon as possible but in any event within three Business Days after DB Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 32.2(a), DB Co shall submit further particulars based on such information to the City Representative and the Independent Certifier.
- (d) The City Representative shall, after receipt of written details under Section 32.2(b), or of further particulars under Section 32.2(c), be entitled by written Notice to require DB Co to provide such further supporting particulars as the City Representative may reasonably consider necessary. DB Co shall afford the City Representative and the Independent Certifier reasonable facilities for their investigations, including, without limitation, on-site inspection.
- (e) [Not used]
- (f) [Not used]

- (g) [Not used]
- (h) Subject to the provisions of this Section 32, the City Representative shall allow DB Co an extension of time equal to the delay caused by the Delay Event and shall fix (A) revised Scheduled Substantial Completion Date(s), or (B) revised Scheduled Final Completion Date(s), as applicable, as soon as reasonably practicable and in any event within 10 Business Days following the later of:
 - (i) the date of receipt by the City Representative of DB Co's Notice given in accordance with Section 32.2(b) and the date of receipt of any further particulars (if such are required under Section 32.2(c), whichever is later; and
 - (ii) the date of receipt by the City Representative of any supplemental information supplied by DB Co in accordance with Section 32.2(c) and the date of receipt of any further particulars (if such are required under Section 32.2(d)), whichever is later.
- (i) For the sake of clarity, where the City issues a revised Scheduled Substantial Completion Date in accordance with Section 32.2(h), if the applicable Initial Countdown Notice has been delivered, DB Co shall be deemed to have delivered a Subsequent Notice referred to in Section 25.5 effecting such a new date.
- (j) If:
 - (i) the City Representative declines to fix (A) revised Scheduled Substantial Completion Date(s); or (B) a revised Scheduled Final Completion Date(s), as applicable;
 - (ii) DB Co considers that different (A) Scheduled Substantial Completion Date(s), or (B) Scheduled Final Completion Date(s) should be fixed; or
 - (iii) there is a dispute as to whether a Delay Event has occurred,then DB Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (k) DB Co shall be relieved from liability for liquidated damages that would otherwise accrue under Section 25.5 for the period of extension resulting from a Delay Event determined in accordance with Sections 32.2(h) or (j).
- (l) If DB Co does not provide the Notice, details or further particulars required by Sections 32.2(a), (b), (c) or (d) to the City Representative and the Independent Certifier in respect of any Delay Event in accordance with the time periods specified herein, DB Co will not be entitled to any additional compensation, extension of time or other relief from its obligations under this Project Agreement to the extent the amount thereof was increased or the ability to mitigate was adversely affected as a result of such delay in providing such Notice, details or further particulars. If the period of delay in providing such Notice, details or further particulars is 6 months or more, the rights of DB Co with respect to such Delay Event will be of no further force or effect.
- (m) If the Works are behind schedule for a reason other than a Delay Event, or if a DB Co Party delays the progress of any portion of the Works necessary to complete the Works on schedule,

DB Co shall use all reasonable measures to bring the Works back on schedule. DB Co shall exercise all means within its discretion, such as directing any DB Co Party that is creating delays to increase their labour forces and equipment, to improve the organization and expediting of the Works, or to work overtime as may be necessary. DB Co shall provide any additional supervision, coordination and expediting, including overtime by its own personnel as may be required to achieve this end. The costs and expenses incurred by the use of such measures and overtime shall be borne by DB Co and/or the DB Co Parties and there shall be no adjustment to the Guaranteed Price as a result of such costs and expenses and for clarity, no extension to any Scheduled Substantial Completion Date.

- (n) Where there are Concurrent Delays, some of which are Delay Events for which DB Co would otherwise be entitled to schedule relief hereunder, and some of which are not Delay Events for which DB Co would otherwise be entitled to schedule relief hereunder, then DB Co shall not be entitled to:
 - (i) an extension in any Scheduled Substantial Completion Date, or Scheduled Final Completion Date, to the extent of such Concurrent Delays; or
 - (ii) any compensation for Concurrent Delay Direct Costs attributable to such Concurrent Delays,

except to the extent that one of the events that occurs as part of the Concurrent Delay is a Delay Event referred to in Section 32.1(a)(i), 32.1(a)(ii), 32.1(a)(iv), 32.1(a)(ix), 32.1(a)(xv) or 32.1(a)(xvi) in which case DB Co shall be entitled to schedule relief and compensation in accordance with Sections 32 (without regard to this Section 32.2(n)) and 33 of this Project Agreement. For greater certainty, the compensation payable by the City to DB Co pursuant to Section 33 of this Project Agreement with respect to all other Compensation Events by reason of such event being a Compensation Event (as opposed to being both a Compensation Event and a Delay Event) shall be payable in full without regard to the terms of this Section 32.2(n).

- (o) Subject to Sections 11.19, the City shall provide DB Co with access to and use of the Lands as required pursuant to Section 16 of this Project Agreement in a manner consistent with the Works Schedule and in accordance with the notification requirements and restrictions set out in the Project Agreement, provided that DB Co agrees that the inability of the City to provide DB Co with access to an area for construction activities not on the Critical Path for reasons set out in Section 11.19 will not result in the occurrence of a Delay Event (and, for greater certainty, there shall not be a resulting change to a Scheduled Substantial Completion Date) or a Compensation Event (and, for certainty, there shall not be any resulting change to the Guaranteed Price).
- (p) In no event shall the extension of time for a Delay Event be more than the necessary extension of the Critical Path as a result of the delay caused by the Delay Event.
- (q) Subject to DB Co meeting the obligations set out in Section 32.2 and Section 32.3, if, (i) a Lane Closure or Bus Rapid Transit Lane Closure is directly caused or extended by one or more of the events set out in Section 32.1(a), whether or not such event constitutes a Delay Event, such Lane Closure or Bus Rapid Transit Lane Closure or extension thereof shall not be included in the Aggregate Actual Lane Closures, or Aggregate Actual Bus Rapid Transit Lane Closures, or the Aggregate Actual Lane Closures Cost, or the Aggregate Actual Bus Rapid Transit Lane Closures Cost for the relevant Road Section for the purposes of calculating the Lane Closure Adjustment in accordance with the process set out in Schedule 34 – Mobility Matters.

- (r) Subject to DB Co meeting the obligations set out in Section 32.2 and Section 32.3, if (i) a date or duration in the Systems Integration Management Plan, or a Commencement Date or duration for use of the Lands identified in Schedule 20 – Lands, is delayed by one or more events set out in Section 32.1(a), whether or not such event constitutes a Delay Event, such date or extension of the applicable duration shall be amended in the Systems Integration Management Plan, and/or the City shall use commercially reasonable efforts to amend such Commencement Date or duration in Schedule 20 – Lands, as applicable.

32.3 Mitigation

- (a) If DB Co is (or claims to be) affected by a Delay Event, DB Co shall, and shall require all DB Co Parties to, take and continue to take commercially reasonable steps:
 - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.
- (b) To the extent that DB Co does not comply with its obligations under this Section 32.3, such failure shall be taken into account in determining DB Co's entitlement to an extension of time pursuant to this Section 32.

32.4 Change in Sequence of Scheduled Substantial Completion Dates

- (a) If, as a result of one or more Delay Events, the East Scheduled Substantial Completion Date is scheduled to occur after the West Scheduled Substantial Completion Date, the Parties hereby undertake to promptly negotiate in good faith any necessary amendments to this Project Agreement to effect such change in the sequence of Scheduled Substantial Completion Dates, with a view to ensuring that, subject to the obligations and rights to relief arising hereunder from such Delay Event(s), neither Party is in any worse position than it would have been had the East Scheduled Substantial Completion Date remained scheduled to occur prior to the West Scheduled Substantial Completion Date.

33. COMPENSATION EVENTS

33.1 Definition

- (a) For the purposes of this Project Agreement, “**Compensation Event**” means any event referred to in Sections 32.1(a)(ii), 32.1(a)(iii), 32.1(a)(iv) (subject to Section 32.2(o)), 32.1(a)(v), 32.1(a)(vi), 32.1(a)(vii), 32.1(a)(viii), 32.1(a)(ix), 32.1(a)(x), 32.1(a)(xiv), 32.1(a)(xv), 32.1(a)(xvi), 32.1(a)(xvii), 32.1(a)(xviii), 32.1(a)(xix), 32.1(a)(xx), 32.1(a)(xxi), 32.1(a)(xxii) and 32.1(a)(xxiii), 32.1(a)(xxv), 32.1(a)(xxvi) and 32.1(a)(xxvii) as a direct result of which DB Co has incurred loss or expense, whether or not any of these events has also caused a delay, and the procedure described in Section 32.2 shall apply, *mutatis mutandis*, to such events as Compensation Events (including, for certainty, Section 32.2(l)).

33.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, DB Co's sole right to compensation shall be as set out in this Section 33. For greater certainty, except as aforesaid, no other Delay Event shall entitle DB Co to receive any compensation, except as otherwise provided in:
 - (i) Schedule 22 – Variation Procedure, in the case of a Delay Event referred to in Section 32.1(a)(i);
 - (ii) Section 35, in the case of a Delay Event referred to in Section 32.1(a)(xii);
 - (iii) Section 33.6, in the case of a Delay Event referred to in Section 32.1(a)(xi);
 - (iv) Section 30, in the case of a Delay Event referred to in Section 32.1(a)(xiii); and
 - (v) Section 33.6, in the case of a Delay Event referred to in Section 32.1(a)(xxiv).
- (b) Subject to Sections 33.2(c), 33.3, 33.4 and 33.5, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, DB Co shall be entitled to such compensation as would place DB Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by the City to DB Co. DB Co shall promptly provide the City Representative with any information the City Representative may require in order to determine the amount of such compensation.
- (c) If the City is required to compensate DB Co pursuant to this Section 33.2, then the City may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with DB Co, acting reasonably.
- (d) To the extent DB Co does not comply with its obligations under Sections 32.2(a), (b), (c), (d), (e) or (l), and subject to Section 32.2(l), such failure shall be taken into account in determining DB Co's entitlement to relief pursuant to this Section 33.

33.3 Mitigation

- (a) If DB Co is (or claims to be) affected by a Compensation Event, DB Co shall, and shall require all DB Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 33 in relation to any Compensation Event.
- (b) To the extent that DB Co does not comply with its obligations under this Section 33.3, such failure shall be taken into account in determining DB Co's entitlement to relief pursuant to this Section 33.

33.4 Insured Exposure

- (a) The compensation payable to DB Co pursuant to this Section 33 shall be reduced by any amount which DB Co or a DB Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in

respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

33.5 Delivery of PBS-2

- (a) If an event referred to in Section 32.1(a)(ii), Section 32.1(a)(iii), Section 32.1(a)(v), Section 32.1(a)(vi), Section 32.1(a)(vii), Section 32.1(a)(ix), Section 32.1(a)(x), 32.1(a)(xiv), Section 32.1(a)(xx), Section 32.1(a)(xxi), Section 32.1(a)(xxii), Section 32.1(a)(xxiii) or Section 32.1(a)(xxiv) occurs after the 240th day following Financial Close (provided that in the event that the City failed to comply with the time periods stipulated in Schedule 10 – Review Procedure in respect of PBS-2 such 240 day time period shall be automatically extended on a day-for-day basis) and prior to the City assigning the comment “NO COMMENT” or “MINOR COMMENT” to PBS-2 in accordance with Schedule 12 – Works Scheduling Requirements, DB Co shall not be entitled to receive any compensation under this Section 33 in respect of such Compensation Event, unless such Compensation Event is also a Delay Event, in which case DB Co shall be entitled to compensation in an amount equal to the lesser of:
- (i) the Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay; and
 - (ii) the compensation which, but for the application of this Section 33.5, DB Co would have been entitled to receive pursuant to Section 33.2(b).

33.6 Special Compensation Regarding Category 1 Utility Company

- (a) For the purposes of the special compensation regarding Category 1 Utility Companies, the following shall apply:
- (i) Sections 33.3 and 33.4 shall apply to the compensation set out in this Section 33.6 notwithstanding that the Delay Event referred to in Section 32.1(a)(xxiv) is not a Compensation Event.
- (b) If it is agreed, or determined in accordance with Schedule 27 - Dispute Resolution Procedure, that there has been a Delay Event referred to in Section 32.1(a)(xxiv), DB Co shall be entitled to the following:
- (i) an amount calculated in accordance with the following:
 - (A) For the purpose of this Section 33.6(b)(i) “**Non-Debt Compensation Amount**” means an amount that would place DB Co in no better and no worse position than it would have been in had the applicable Delay Event referred to in Section 32.1(a)(xxiv) not occurred but excluding, any interest or financing costs accrued and paid or which became payable in accordance with the Lending Agreements during the period of the applicable Delay Event (such excluded amount, the “**Special Utility Debt Compensation Amount**”).
 - (B) If the applicable Delay Event delays any Substantial Completion for 30 or fewer days, the City shall pay to DB Co an amount equal to [REDACTED]

per cent of the Non-Debt Compensation Amount and [REDACTED] per cent of the Special Utility Debt Compensation Amount for the period of the delay.

- (C) If the applicable Delay Event delays any Substantial Completion for 60 or fewer days, the City shall pay to DB Co an amount equal to,
 - (I) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the first 30 days of the delay, plus,
 - (II) [REDACTED] per cent of the Non-Debt Compensation Amount for the number of days of delay exceeding 30 days of delay; plus
 - (III) [REDACTED] per cent of the Special Utility Debt Compensation Amount for the period of the delay.
- (D) If the applicable Delay Event delays any Substantial Completion for 180 or fewer days, the City shall pay to DB Co an amount equal to,
 - (I) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the first 30 days of delay, plus,
 - (II) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the next 30 days of delay, plus,
 - (III) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the number of days exceeding 60 days of delay; plus
 - (IV) [REDACTED] per cent of the Special Utility Debt Compensation Amount for the period of the delay.
- (E) If the applicable Delay Event delays any Substantial Completion for more than 180 days, the City shall pay to DB Co an amount equal to,
 - (I) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the first 30 days of delay, plus,
 - (II) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the next 30 days of delay, plus,
 - (III) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the next 120 days of delay, plus,
 - (IV) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the number of days exceeding 180 days of delay, plus
 - (V) [REDACTED] per cent of the Special Utility Debt Compensation Amount for the period of the delay.

34. RELIEF EVENTS

34.1 Definition

(a) For the purposes of this Project Agreement, “**Relief Event**” means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:

- (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
- (ii) failure by any Utility Company, local authority or other like body to perform works or provide services (solely in its role as utility service provider or similar service provider to the Project), provided, however, that such a failure shall not, in any event, be cause for a Relief Event, unless DB Co:
 - (A) has performed its obligations under any applicable agreement with the Utility Company with respect to the provision of such services and the relevant Utility Company has failed to meet its obligations thereunder; and
 - (B) has made all, and is continuing to make all, commercially reasonable efforts to diligently enforce its legal rights under any applicable agreement in respect of such services and otherwise cause the Utility Company to perform those works or services.

For clarity, Section 34.1(a)(ii) shall apply only in circumstances where the Utility Company is providing services to DB Co of the type provided by the Utility Company in the normal course of its business. For further clarity, Section 34.1(a)(ii) shall not apply in circumstances where DB Co has entered into an agreement for the design and construction of Utility Infrastructure and the applicable Utility Company has failed to comply with its obligations under such an agreement;

- (iii) accidental loss or damage to the Works and/or the New City Infrastructure or any roads servicing the Lands;
- (iv) without prejudice to any obligation of DB Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo falling short of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the New City Infrastructure, the New MTO Infrastructure or construction industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Works or the construction and/or operation of transit systems in general, provided, however, that a

civil disobedience or protest action shall not, in any event, be cause for a Relief Event unless DB Co has fully complied with Section 11.13,

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and/or (i) in the case of DB Co claiming relief, as a result of any act or omission of any DB Co Party and (ii) in the case of the City claiming relief, as a result of any act or omission of any City Party.

34.2 Consequences of a Relief Event

- (a) Subject to Section 34.3, no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 38.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement, but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event).
- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 32.1(a)(xi):
 - (i) DB Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 32, and, to the extent such Relief Event causes any Lane Closure or Bus Rapid Transit Lane Closure, DB Co shall be relieved from any Lane Closure Adjustment, Bus Rapid Transit Lane Closure Adjustment or Peak Hour Lane Interruption that would otherwise result therefrom; and
 - (ii) in respect of a Relief Event referred to in Sections 34.1(a)(ii) (but only in respect of failure by a Utility Company to perform works or provide services), 34.1(a)(v), 34.1(a)(vi) or 34.1(a)(vii), on the earlier of (A) the affected Substantial Completion Date and (B) the date of payment of the City Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, the City shall pay to DB Co an amount equal to the Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by DB Co or any DB Co Party to the Lenders up to and including the applicable Scheduled Substantial Completion Date or the date of payment of the City Default Termination Sum or Non-Default Termination Sum, as applicable, together with interest thereon at the rate payable on the principal amount funded under the Lending Agreements, which, but for the Delay Event, would not have been paid by DB Co to the Lenders.
- (c) If a Relief Event occurs, DB Co shall not be entitled to receive any compensation other than as expressly provided in Sections 34.2(b)(ii) and 40.
- (d) Subject to Section 40, DB Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 34.

34.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by

the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.

- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 34.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 34.
- (c) The Party claiming relief shall give written Notice to the other Party within 5 Business Days after such Party becoming aware of the relevant Relief Event. Such initial Notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 34.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any Notice referred to in Section 34.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

34.4 Insured Exposure

- (a) The compensation payable to DB Co pursuant to this Section 34 shall be reduced by any amount which DB Co or a DB Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

35. FORCE MAJEURE

35.1 Definition

- (a) For the purposes of this Project Agreement, "**Force Majeure**" means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
 - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
 - (ii) nuclear or radioactive contamination of the Works, the New City Infrastructure and/or the Lands, unless DB Co or any DB Co Party is the source or cause of the contamination;
 - (iii) chemical or biological contamination of the Works, the New City Infrastructure and/or the Lands from any event referred to in Section 35.1(a)(i);

- (iv) pressure waves caused by devices traveling at supersonic speeds; or
- (v) the discovery of any Species-at-Risk, fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, require the Works to be abandoned.

35.2 Consequences of Force Majeure

- (a) Subject to Section 35.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 32.1(a)(xii):
 - (i) DB Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 32; and
 - (ii) on the earlier of (A) the affected Substantial Completion Date(s) and (B) the date of payment of the City Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, the City shall pay to DB Co an amount equal to the Debt Service Amount accrued and paid or that accrued in accordance with the Lending Agreements during the period of delay by DB Co or any DB Co Party to the Lenders up to and including the applicable Scheduled Substantial Completion Date(s) or the date of payment of the City Default Termination Sum or Non-Default Termination Sum, as applicable, together with interest thereon at the rate payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would not have been paid by DB Co to the Lenders.
- (c) If an event of Force Majeure occurs prior to the affected Substantial Completion Date(s), DB Co shall not be entitled to receive any compensation other than as expressly provided in Sections 35.2(b)(ii) and 40.
- (d) Subject to Section 40, DB Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 35.
- (e) Subject to the provisions of this Section 35, and with respect to an event of Force Majeure that is not a Delay Event and that arises prior to the affected Substantial Completion Date(s), (i) a Lane Closure that is directly caused or extended by the occurrence of an event of Force Majeure shall not be included in the Aggregate Actual Lane Closures or the Aggregate Actual Lane Closure Cost for the relevant Road Section for the purposes of calculating the Lane Closure Adjustment in accordance with the process set out in Schedule 34 – Mobility Matters.

35.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use

commercially reasonable efforts to remedy its failure to perform, including efforts to minimize any negative impact of the event of Force Majeure on the Works Schedule.

- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 35.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 35.
- (c) The Party claiming relief shall give written Notice to the other Party within 5 Business Days after such Party becoming aware of the relevant event of Force Majeure. Such initial Notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 35.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any Notice referred to in Section 35.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

35.4 Insured Exposure

- (a) The compensation payable to DB Co pursuant to this Section 35 shall be reduced by any amount which DB Co or a DB Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

35.5 Modifications

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 – Dispute Resolution Procedure shall not apply to a failure of the City and DB Co to reach agreement pursuant to this Section 35.5.

36. DB CO DEFAULT

36.1 DB Co Events of Default

- (a) For the purposes of this Project Agreement, “**DB Co Event of Default**” means any one or more of the following events or circumstances:

- (i) the occurrence of any of the following events other than as a consequence of a breach by the City of its payment obligations hereunder:
 - (A) DB Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of DB Co with respect to DB Co or any of the property, assets or undertaking of DB Co, or any creditor of DB Co takes control, or takes steps to take control, of DB Co or any of DB Co's assets, or any proceedings are instituted against DB Co that result in DB Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by DB Co seeking any such result, or any such proceedings are instituted by a person other than DB Co, the City, a City Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Works or of the City Activities (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days after being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of DB Co are taken to authorize any of the actions set forth in this Section 36.1(a)(i);
 - (B) DB Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on DB Co's ability to perform its obligations under this Project Agreement;
 - (C) if any execution, sequestration, extent, garnishment or other process of or order by any court becomes enforceable against DB Co or if a distress or analogous process is levied against any property of DB Co that materially adversely affects DB Co's ability to perform its obligations hereunder; or
 - (D) DB Co suffers any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this Section 36.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 36.1(a)(i)(A), (B) or (C), constitute a DB Co Event of Default;

- (ii) DB Co failing to achieve East Substantial Completion or West Substantial Completion within 365 days after the West Scheduled Substantial Completion Date (the “**Longstop Date**”);
- (iii) [Not used];
- (iv) [Not used];
- (v) DB Co either:
 - (A) failing to deliver a Recovery Schedule under Section 2.4 of Schedule 12 – Works Scheduling Requirements;
 - (B) delivering a Recovery Schedule under Section 2.4 of Schedule 12 – Works Scheduling Requirements which indicates that DB Co will not achieve East Substantial Completion or West Substantial Completion by the Longstop Date;
 - (C) delivering a Recovery Schedule under Section 2.4 of Schedule 12 – Works Scheduling Requirements that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 2.4 of Schedule 12 – Works Scheduling Requirements.
- (vi) DB Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Works, or the Governmental Activities, or that may compromise (A) the City’s reputation or integrity, or (B) the nature of the public transit system in the City of Ottawa or the Province of Ontario so as to affect public confidence in the public transit system in the City of Ottawa or the Province of Ontario or the Project, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days after receipt of Notice of the same from the City;
- (vii) DB Co committing a breach of Sections 42 or 43;
- (viii) DB Co committing a breach of its obligations under this Project Agreement which has or will have a material adverse effect on the performance of the City Activities (other than a breach that is otherwise referred to in Sections 36.1(a)(i) to (vii) inclusive or (ix) to (xviii) inclusive) other than where such breach is a consequence of a breach by the City of its obligations under this Project Agreement or the result of any circumstance described in Section 11.12(k), and upon becoming aware of such breach DB Co failing to remedy such breach in accordance with all of the following:
 - (A) DB Co shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on the City and the performance of the City’s operations and the City Activities;
 - (II) put forward, within 5 Business Days after receipt of Notice of such breach from the City, a reasonable plan and schedule for diligently

remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days after Notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and

- (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder;
- (ix) DB Co wholly abandoning the Works for a period which exceeds three Business Days from receipt by DB Co of a written request to return to the Site, other than as a consequence of a breach by the City of its obligations under this Project Agreement;
- (x) DB Co failing to comply with Sections 49.1 or 49.3;
- (xi) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 49.4;
- (xii) DB Co failing to remove an Encumbrance that arose due to an act or omission of DB Co or any DB Co Party (other than any Encumbrance derived through the City) within 45 days following the earlier of:
 - (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
 - (B) the date on which DB Co or any DB Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xiii) DB Co failing to pay any sum or sums due to the City under this Project Agreement, which sum or sums are not being disputed by DB Co in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set off by DB Co pursuant to Section 4.8(a)(ii), and which sum or sums, either singly or in aggregate, exceed(s) **\$[REDACTED]** (index linked), and such failure continues for 30 days from receipt by DB Co of a Notice of non-payment from the City;
- (xiv) DB Co failing to comply with Section 50;
- (xv) DB Co failing to comply with Section 8.3 or Schedule 28 – Refinancing;
- (xvi) DB Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of DB Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than
 - (A) as a consequence of a breach by the City of its obligations under this Project Agreement; or

- (B) the failure to deliver the East Warranty Letter of Credit, West Warranty Letter of Credit, and/or the Remaining Works Letter of Credit (in respect of which failure the City will have the rights set out in Section 4.2(d), (e) and (h), respectively); or
 - (C) the failure to replace a Non-Renewed Warranty Letter of Credit, or renew the Remaining Works Letter of Credit (in respect of which failure the City will have the rights set out in Section 11.18(i) and 11.18A(i) respectively),
and,
 - (D) in respect of insurance, such breach by DB Co is not remedied within 10 Business Days after the occurrence of the breach; and
 - (E) in respect of a bond or security, such breach by DB Co is not remedied within 5 Business Days after DB Co becoming aware of such breach;
- (xvii) DB Co failing to comply with any determination, order or award made against DB Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xviii) A default by DB Co or any DB Co Party under any of the Ancillary Documents following the expiry of any applicable notice and cure periods thereunder.

36.2 Notification of Occurrence

- (a) DB Co shall, promptly upon DB Co becoming aware of the occurrence, notify the City of the occurrence, and details, of any DB Co Event of Default and of any event or circumstance which is likely, with the passage of time, giving of Notice, determination of any condition, or otherwise, to constitute or give rise to a DB Co Event of Default.

36.3 Right to Termination

- (a) On the occurrence of a DB Co Event of Default, or at any time after the City becomes aware of a DB Co Event of Default, and, if the occurrence of a DB Co Event of Default is disputed by DB Co in good faith, then following confirmation in accordance with Schedule 27 – Dispute Resolution Procedure that a DB Co Event of Default has occurred, the City may, subject to Section 36.4 and 36.3(b), terminate this Project Agreement in its entirety by written Notice having immediate effect, such Notice to be given to DB Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice.
- (b) In the event a DB Co Event of Default was caused solely by the Nominated Signalling Subcontractor, the City's rights to terminate this Project Agreement for such DB Co Event of Default shall be stayed for a period of 180 days after a Notice of default to DB Co for such DB Co Event of Default. In the event that during such 180 day period the City and DB Co mutually agree that the Nominated Signalling Contractor will not be able to perform the Nominated Signalling Subcontractor Works in accordance with the Current PBS, then subject to and in accordance with Schedule 22 – Variation Procedure, any consequential alteration, extension or variation in the Works shall result in a Variation.

36.4 Remedy Provisions

- (a) In the case of a DB Co Event of Default referred to in Sections 36.1(a)(i)(B), 36.1(a)(i)(C), 36.1(a)(i)(D) (where the DB Co Event of Default referred to in Section 36.1(a)(i)(D) is analogous to a DB Co Event of Default referred to in Section 36.1(a)(i)(B) or 36.1(a)(i)(C)), 36.1(a)(v), 36.1(a)(vi), 36.1(a)(vii), 36.1(a)(ix), 36.1(a)(x), 36.1(a)(xi), (where the DB Co Event of Default referred to in Section 36.1(a)(xi) is capable of being remedied), 36.1(a)(xiii), 36.1(a)(xv), 36.1(a)(xvi) (where the DB Co Event of Default referred to in Section 36.1(a)(xvi)) is not in respect of insurance), 36.1(a)(xvii), or 36.1(a)(xviii), the City shall, prior to being entitled to terminate this Project Agreement, give Notice of default to DB Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice, and DB Co shall:
- (i) within five Business Days after such Notice of default, put forward a reasonable plan and schedule for diligently remedying the DB Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such DB Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days after the Notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to the City, acting reasonably; and
 - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where DB Co puts forward a plan and schedule in accordance with Section 36.4(a)(i) that has a date for the DB Co Event of Default to be remedied that is beyond 30 days from the Notice of default, the City shall have 5 Business Days from receipt of the same within which to notify DB Co that the City does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which the City shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a DB Co Event of Default, of which a Notice of default was given under Section 36.4(a), occurs and:
- (i) DB Co fails to immediately commence and thereafter diligently continue to remedy the DB Co Event of Default and to mitigate any adverse effects on the City and the Governmental Activities; or
 - (ii) DB Co fails to put forward a plan and schedule pursuant to Section 36.4(a)(i); or
 - (iii) such DB Co Event of Default is not remedied within 30 days after such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 36.4(a) and (b); or
 - (iv) where DB Co puts forward a plan and schedule pursuant to Section 36.4(a)(i) and DB Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then the City may terminate this Project Agreement in its entirety by written Notice with immediate effect, such Notice to be given to DB Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice.

- (d) Notwithstanding that the City may give the Notice referred to in Section 36.4(a), and without prejudice to the other rights of the City in this Section 36.4, at any time during which a DB Co Event of Default is continuing, the City may, at DB Co's risk and expense, take such steps as the City considers appropriate, either themselves or by engaging others (including a third party) to take such steps, to perform or obtain the performance of DB Co's obligations under this Project Agreement or to remedy such DB Co Event of Default.
- (e) Upon the occurrence of a DB Co Event of Default that DB Co has remedied pursuant to this Section 36.4, such occurrence of a DB Co Event of Default shall thereafter cease to be a DB Co Event of Default and the City shall not be entitled to terminate this Project Agreement for that occurrence of a DB Co Event of Default.

36.5 City Costs

- (a) DB Co shall reimburse the City for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by the City in exercising its rights under this Section 36, including any relevant increased administrative expenses. The City shall take commercially reasonable steps to mitigate such costs.

36.6 No Other Rights to Terminate

- (a) The City shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 36 and 38.

37. CITY DEFAULT

37.1 City Events of Default

- (a) For the purposes of this Project Agreement, "**City Event of Default**" means any one or more of the following events or circumstances:
 - (i) the City failing to pay any sum or sums due to DB Co under this Project Agreement, which sum or sums are not being disputed by the City in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set off by the City pursuant to Section 4.8(a)(i), and which sum or sums, either singly or in aggregate, exceed(s) **[\$[REDACTED]]** (index linked), and:
 - (A) in respect of a Substantial Completion Payment or Construction Period Payment, such failure continues for a period of 10 Business Days; or
 - (B) in respect of any other payment due and payable by the City to DB Co under this Project Agreement, such failure continues for a period of 90 days,
- in any such case, from receipt by the City of a Notice of non-payment from or on behalf of DB Co;

- (ii) the City committing a material breach of its obligations under Section 16 (other than as a consequence of a breach by DB Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of DB Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or
- (iii) an act of any Governmental Authority which renders it impossible for DB Co to perform all or substantially all of its obligations under this Project Agreement (other than as a consequence of a breach by DB Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days, provided that, for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the DB Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”.

37.2 DB Co’s Options

- (a) On the occurrence of a City Event of Default and while the same is continuing, DB Co may give Notice to the City of the occurrence of such City Event of Default, which Notice will specify the details thereof, and, at DB Co’s option and without prejudice to its other rights and remedies under this Project Agreement, DB Co may:
 - (i) suspend performance of the Works until such time as the City has remedied such City Event of Default; or
 - (ii) if such City Event of Default has not been remedied within 30 days after receipt by the City of Notice of the occurrence of such City Event of Default, terminate this Project Agreement in its entirety by Notice in writing having immediate effect.

37.3 DB Co’s Costs

- (a) The City shall reimburse DB Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by DB Co in exercising its rights under this Section 37, including any relevant increased administrative expenses. DB Co shall take commercially reasonable steps to mitigate such costs.

37.4 No Other Rights to Terminate

- (a) DB Co shall have no right or entitlement to terminate this Project Agreement, nor to accept any repudiation of this Project Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Project Agreement.

38. RELIEF EVENT AND NON DEFAULT TERMINATION

38.1 Termination for Relief Event

- (a) If a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives Notice to the other Party pursuant to Section 34.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

38.2 Termination for Force Majeure

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 35.5 within 180 days after the date on which the Party affected gives Notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

38.3 Termination for Convenience

- (a) The City shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days written Notice to DB Co.
- (b) In the event of Notice being given by the City in accordance with this Section 38.3, the City shall, at any time before the expiration of such Notice, be entitled to direct DB Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works where such Works have not yet been commenced.

38.4 Automatic Expiry on Expiry Date

- (a) This Project Agreement shall terminate automatically on the Expiry Date.
- (b) DB Co shall not be entitled to any compensation due to termination of this Project Agreement on expiry of the Project Term on the Expiry Date.

39. EFFECT OF TERMINATION

39.1 Termination

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a Notice of termination or termination on the Expiry Date pursuant to Section 38.4, this Section 39 shall apply in respect of such termination.

39.2 Continued Effect – No Waiver

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Project Agreement, including any right to terminate this Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

39.3 Continuing Performance

- (a) Subject to any exercise by the City of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of DB Co, and subject to the rights of DB Co pursuant to Section 37.2, the Parties shall continue to perform their obligations under this Project

Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination) notwithstanding the giving of any Notice of default or Notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 39.

39.4 Effect of Notice of Termination

- (a) On the service of a Notice of termination, or termination on the Expiry Date pursuant to Section 38.4:
- (i) if termination is prior to any Substantial Completion Date(s), in so far as any transfer shall be necessary to fully and effectively transfer such property to the City as shall not already have been transferred to the City pursuant to Section 45.1, DB Co shall transfer to, and there shall vest in, the City, free from all Encumbrances (other than the Encumbrances caused or consented to by the City), such part of the Works, the New City Infrastructure, and the New MTO Infrastructure as shall have been constructed and such items of the plant, infrastructure and equipment as shall have been procured by DB Co, and, if the City so elects:
 - (A) all plant, equipment and materials (other than those referred to in Section 39.4(a)(i)(B)) on or near to the Lands shall remain available to the City for the purposes of completing the Works; and
 - (B) all construction plant and equipment shall remain available to the City for the purposes of completing the Works, subject to payment by the City of the Construction Contractor's reasonable charges;
 - (ii) if termination is prior to any Substantial Completion Date(s), DB Co shall deliver to the City (to the extent such items have not already been delivered to the City) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works, the New City Infrastructure, and the New MTO Infrastructure, as applicable, comprising the Works that are the subject of such Substantial Completion Date(s);
 - (iii) in so far as title shall not have already passed to the City pursuant to Section 45.1 or Section 39.4(a)(i), DB Co shall hand over to, and there shall vest in, the City, free from all Encumbrances (other than any Encumbrances caused or consented to by the City), the New City Infrastructure and the New MTO Infrastructure together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Works and all facilities and equipment, and to the extent that any such assets or rights are not capable of being transferred by DB Co to the City, DB Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by the City in order to enable them, or their designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by DB Co if this Project Agreement had not been terminated;
 - (iv) if the City so elects, DB Co shall ensure that any of the Subcontracts between DB Co and a Subcontractor (including the Design and Construction Contract), any other instrument entered into between any such Subcontractor and DB Co for securing the performance by such Subcontractor of its obligations in respect of the Works or to protect the interests of DB Co, shall be novated or assigned to the City or its nominee, provided that where

termination occurs other than as a result of a DB Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of the Design and Construction Contract with the Construction Contractor shall be made by the City pursuant to, and subject to, the terms of the Construction Contractor's Direct Agreement;

- (v) DB Co shall, or shall ensure that any DB Co Party shall, offer to sell (and if the City so elects, execute such sale) to the City at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 – Dispute Resolution Procedure), free from all Encumbrances (other than any Encumbrances caused or consented to by the City), all or any part of the stocks of material and other assets, road vehicles, construction equipment, spare parts and other moveable property owned by DB Co or any DB Co Parties and dedicated to or predominantly used in respect of the New City Infrastructure, and reasonably required by the City in connection with the operation of the New City Infrastructure;
- (vi) DB Co shall use commercially reasonable efforts to assign, or otherwise transfer, to the City, free from all Encumbrances (other than any Encumbrances caused or consented to by the City), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by DB Co under this Project Agreement and included in the New City Infrastructure and the New MTO Infrastructure; and
- (vii) DB Co shall deliver to the City all information, reports, documents, records and the like referred to in Section 28, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by DB Co or the DB Co Parties (in which case complete copies shall be delivered to the City).

39.5 Ownership of Information

- (a) Subject to Section 41, all information obtained by DB Co, including the As-Built Drawings, Record Drawings, and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Works accumulated over the course of the Project Term shall be the property of the City and upon termination of this Project Agreement shall be provided or returned to the City, as applicable, in electronic format acceptable to the City, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

39.6 Provision in Subcontracts

- (a) DB Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant DB Co Parties to make such provision and to require other DB Co Parties to make such provision) to ensure that the City shall be in a position to exercise its rights, and DB Co shall be in a position to perform its obligations, under this Section 39.

39.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, DB Co shall:
 - (i) as soon as practicable remove from the Lands all property belonging to DB Co or any DB Co Party that is not acquired by the City pursuant to Section 39.4 or otherwise, and, if DB Co has not done so within 60 days after any Notice from the City requiring it to do so, the City may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of DB Co;
 - (ii) forthwith deliver to the City Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the New City Infrastructure; and
 - (B) to the extent transferable and without prejudice to the City's rights pursuant to Section 41, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the New City Infrastructure; and
 - (iii) as soon as practicable vacate the Lands and shall leave the Lands and the New City Infrastructure in a safe, clean and orderly condition.

39.8 Termination upon Aforesaid Transfer

- (a) On completion of DB Co's obligations pursuant to this Section 39, this Project Agreement shall terminate and, except as provided in Section 39.9, all rights and obligations of the City and DB Co under this Project Agreement shall cease and be of no further force and effect.

39.9 Survival

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
 - (i) all representations, warranties and indemnities under this Project Agreement; and
 - (ii) Sections 1.2, 1.3, 1.5, 4.8, 4.9, 4.11, 6, 7, 8, 11.15(b), 11.16(a), 11.17, 11.17A, 11.18, 11.18A, 17.2, 17.3, 18.1, 18.2, 18.3(a), 18.4(a), 22.6, 25.15, 27, 28, 36.5, 37.3, 38.4, 39, 40, 41 (with the exception of 41.4(b)), 42, 43, 44.3, 45, 46, 47, 48, 50.3, 51.1, 53.2, 53.3, 53.4, 53.8, 53.9, 53.10, 53.11, 53.12 of this Project Agreement, Schedule 7B – Warranty Letters of Credit, Schedule 7C – Remaining Works Letter of Credit, Schedule 14 – Testing & Commissioning, Schedule 23 – Compensation on Termination, Schedule 32 – Financial Model, Sections 1.2 – 1.8 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Sections 2.1 – 2.6 and 3.2-3.9 of Schedule 24 – Intellectual Property, Schedule 34 – Mobility Matters, and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 38.4. For clarity, any termination of this Project Agreement shall be without prejudice to, and shall not affect, the Performance Guarantee of Construction Guarantor, which shall survive the termination of this Project Agreement, including termination on the Expiry Date pursuant to Section 38.4, in respect of any and all of such surviving provisions of the Project Agreement.

40. COMPENSATION ON TERMINATION

40.1 Compensation on Termination

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 23 – Compensation on Termination shall apply and the City shall pay DB Co any applicable compensation on termination.

40.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 40.2(b), any compensation paid pursuant to this Section 40, including pursuant to Schedule 23 – Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of DB Co and the City, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and DB Co and the City shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 40.2(a) shall be without prejudice to:
 - (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 4.8 or taken into account pursuant to Schedule 23 – Compensation on Termination in determining or agreeing upon the City Default Termination Sum, Non-Default Termination Sum, DB Co Default Termination Sum or any other termination sum, as the case may be; and
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations surviving termination of this Project Agreement pursuant to Section 39.9, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date.

41. INTELLECTUAL PROPERTY

41.1 Ownership of Intellectual Property

- (a) Subject to Section 41.3(a), the Ownership of Intellectual Property shall be as set out in Schedule 24 – Intellectual Property. DB Co and the City shall each comply with the requirements of Schedule 24 – Intellectual Property.

41.2 Licenses to Intellectual Property

- (a) Schedule 24 – Intellectual Property sets out the terms on which Intellectual Property used or supplied in connection with the Project will be licenced.

41.3 Representation and Warranty

- (a) DB Co represents, warrants and covenants to the City that:
 - (i) DB Co has and shall have the full and unencumbered right to provide all rights and licenses granted to the City in this Project Agreement and to make all assignments of Intellectual Property as contemplated in this Project Agreement and to otherwise fully comply with the terms and requirements of Schedule 24 – Intellectual Property and its obligations therein;
 - (ii) any Intellectual Property licenses to the City pursuant to this Project Agreement does not and shall not infringe, and is not and shall not be misappropriation of, any third party Intellectual Property rights;
 - (iii) as of Commercial Close:
 - (A) DB Co has not received any alleged infringement or misappropriation notices from third parties regarding any such Intellectual Property; and
 - (B) no fact is known to DB Co (including in respect of any actual, pending or threatened disputes, claims, suits, actions or proceedings or any other circumstance or event) that will, or could reasonably, effect, limit or prevent DB Co from fully complying with this Section 41.3(a).

41.4 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials or Intellectual Property are developed jointly by,
 - (i) DB Co or any Subcontractor and the City to the exclusion of any other party pursuant to this Project Agreement or in relation to the New City Infrastructure, the Lands or Works (the “**City Jointly Developed Materials**”); and
 - (ii) DB Co or any Subcontractor and MTO to the exclusion of any other party in relation to the New MTO Infrastructure that will be owned by MTO (the “**MTO Jointly Developed Materials**”),(together, the “**Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that,
 - (iii) the City shall be the sole and exclusive owner of all right, title and interest in and to the City Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and DB Co shall, at the request of the City, execute such further agreements and cause the Subcontractors to execute any and all assignments,

waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision; and

- (iv) MTO shall be the sole and exclusive owner of all right, title and interest in and to the MTO Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and that DB Co shall, at the request of MTO, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) The City hereby grants DB Co, and shall procure that MTO grants DB Co, a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Jointly Developed Materials during the Project Term for the sole purposes of DB Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to DB Co in the Jointly Developed Materials shall automatically terminate, and DB Co shall return any and all Jointly Developed Materials in the custody or possession of DB Co to,
 - (i) the City, in the case of the City Jointly Developed Materials; and
 - (ii) MTO, in the case of the MTO Jointly Developed Materials.
- (d) In the event of any inconsistency between this Section 41 and any provision of Schedule 24 – Intellectual Property, the wording of this Section 41 shall prevail.

41.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 41 or Schedule 24 – Intellectual Property are generated by, or maintained on, a computer or similar system, DB Co shall procure for the benefit of the City, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the City or its nominee to access and otherwise use (subject to the payment by the City of any relevant fee) such data, materials and documents in accordance with rights granted pursuant to Schedule 24 – Intellectual Property.
- (b) For the purposes of Section 41.5(a), “use” has the meaning set out in Schedule 24 – Intellectual Property, and includes the Limited Modification Rights.
- (c) Without limiting the obligations of DB Co under Section 41.5(a), DB Co shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in this Section 41 in accordance with Good Industry Practice. DB Co shall submit to the City Representative DB Co’s proposals for the back-up and storage in safe custody of such data, materials and documents and the City shall be entitled to object if the same is not in accordance with Good Industry Practice. DB Co shall comply, and shall cause all DB Co Parties to comply, with all procedures to which the City Representative has not objected. DB Co may vary its procedures for such back-up and storage subject to submitting its proposals for change to the City Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of

this Section 41.5(c) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

41.6 City Trade-Marks

- (a) DB Co shall not:
 - (i) use any City Trade-Marks without obtaining a trade-mark licence on terms and conditions mutually satisfactory to the City and DB Co, each acting reasonably;
 - (ii) use the names or any identifying logos or otherwise of the City or the City Representative in any advertising or permit them so to be used except with the prior written consent of the City; or
 - (iii) use any Trade-Marks of RTG or any RTG Party without obtaining a trade-mark licence on terms and conditions satisfactory to the RTG or such RTG Party.

41.7 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 41 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

41.8 Government Use of Documents

- (a) DB Co hereby disclaims any right, title or interest of any nature whatsoever it may have in or to this Project Agreement that might prohibit or otherwise interfere with the City's ability to use this Project Agreement in any manner desired by the City.
- (b) DB Co hereby consents to the use by the City of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by the City (in consultation with DB Co) of any information supplied in confidence to the City by DB Co in circumstances where disclosure may be refused under section 17(1) of FIPPA.

41.9 Restrictions

- (a) The Parties hereby agree that either Party may use the Project Know-How for any purpose, provided, however, that neither DB Co nor any Subcontractor shall use the Project Know-How to the extent that such Project Know-How incorporates, references or is otherwise based on the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of the City, the Intellectual Property of any City Party or any third party provided by the City, the Confidential Information of the City, or the Confidential Information of any City Party or any third party provided by the City, including the Output Specifications unless such use is otherwise permitted pursuant to this Project Agreement in order to enable DB Co and the DB Co Parties to meet DB Co's obligations under this Project Agreement.
- (b) DB Co hereby covenants and agrees that it will not make any commercial use, including use in any other request for proposal or similar procurement process, of the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of the City, the Intellectual Property of any City Party or any third party provided by the City, the Confidential

Information of the City, or the Confidential Information of any City Party or any third party provided by the City, including the Output Specifications, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of the City, the Intellectual Property of any City Party provided by the City, the Confidential Information of the City, or the Confidential Information of any City Party provided by the City, including the Output Specifications.

- (c) Nothing in this Section 41.9 shall be deemed to grant to any party (including any Subcontractor or any personnel thereof) any right or license in respect of any other party's or other persons' Intellectual Property.

42. CONFIDENTIALITY

42.1 Disclosure

- (a) Subject to Sections 42.1(b), 42.1(c) and 42.2, but notwithstanding anything else in this Project Agreement to the contrary, DB Co acknowledges and agrees that the City has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of DB Co (or any DB Co Party) or any information derived from this Project Agreement or the information related to the performance of DB Co (or any DB Co Party) as the City, in its sole discretion, may consider appropriate. In exercising its discretion, the City will be guided by the principles set out in Sections 42.1(b) and 42.1(c).
- (b) The City will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of DB Co (or any DB Co Party) or any information derived from this Project Agreement or the information related to the performance of DB Co (or any DB Co Party) which would be exempt from disclosure under section 17(1) of FIPPA.
- (c) Notwithstanding Section 42.1(b), but subject to Section 42.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by DB Co (or any DB Co Party), the City may disclose such information.
- (d) Except as otherwise specified herein or in the Interface Agreement, or as otherwise reasonably required to be disclosed to RTG in respect of any bona fide dispute between RTG and DB Co or RTG and the City arising from or related to this Project Agreement or the Interface Agreement to substantiate any claim or defence thereto, the City shall not, DB Co shall not be required to, and the City shall have no right to compel DB Co to, disclose any commercially sensitive information of DB Co to RTG or any RTG Party. Without limiting the generality of the foregoing, commercially sensitive information shall include any information identified to the City as such by DB Co and shall include, the Lending Agreements, the Financial Model, any cost or draw schedules prepared in connection with this Project Agreement (including any fully-loaded cost schedule), any draw request or information submitted to the City in accordance with Schedule 21 – Construction Period Payments, any financial statements of DB Co, the Construction Contractor, the Construction Guarantors or any Affiliates thereof, and any pricing information obtained by the City, including any such information submitted in connection with any Variation or claim pursuant to Section 33, Section 33.6 or Section 35.

42.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of DB Co (or any DB Co Party) or any information derived from this Project Agreement or the information related to the performance of DB Co (or any DB Co Party), the City shall provide to DB Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 42.1(b). The Parties acknowledge and agree that the Guaranteed Price, but not any breakdown thereof, may be disclosed.
- (b) If DB Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 42.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and the City shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

42.3 Disclosure to Government

- (a) DB Co acknowledges and agrees that subject to compliance with FIPPA, the City will be free to use, disclose or publish (including on websites) any information, including Confidential Information, on such terms and in such manner as the City see fit.
- (b) For greater certainty, DB Co acknowledges and agrees that, subject only to the removal of any information which DB Co is (or would be) entitled to refuse to disclose pursuant to section 17(1) of FIPPA, this Project Agreement, any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of DB Co (or any DB Co Party) or any information derived from this Project Agreement or the information related to the performance of DB Co (or any DB Co Party) are public documents and information and, as such, may be disclosed by the City.

42.4 *Freedom of Information and Protection of Privacy Acts*

- (a) The Parties acknowledge and agree that,
 - (i) MFIPPA applies to the City, and that the City is required to fully comply with MFIPPA; and
 - (ii) FIPPA applies to the MTO, and that the MTO is required to fully comply with FIPPA.
- (b) The City shall, within the time periods provided in MFIPPA for a party to exercise rights to prevent disclosure of information, advise DB Co of any request for Confidential Information that relates to DB Co (or any DB Co Party) or of the City's intention to voluntarily release any information or documents which contain Confidential Information that relates to DB Co (or any DB Co Party).

42.5 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 42 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) DB Co may:
 - (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee or agent of the Lenders and the Lenders' Agent, and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Works or which DB Co is obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to any DB Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that DB Co Party of that DB Co Party's obligations under this Project Agreement.
- (c) DB Co acknowledges that the City may use the Confidential Information of DB Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the City's alternate procurement and financing policies and framework. The City will advise DB Co prior to using any Confidential Information of DB Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall,
 - (i) protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event with less than a reasonable degree of care;
 - (ii) if legally compelled to disclose any Confidential Information,
 - (A) provide the disclosing Party with prompt Notice to that effect to allow the disclosing Party to seek any appropriate remedies and cooperate with the disclosing Party and its legal counsel; and
 - (B) disclose only that portion of the Confidential Information that it is legally required to disclose; and
 - (iii) provide Confidential Information to the disclosing Party upon demand by the disclosing Party.

Section 42.5(e)(iii) shall not apply to Confidential Information in relation to which a Party has been provided a licence pursuant to Schedule 24 – Intellectual Property provided that the use of such Confidential Information is in accordance with Schedule 24 – Intellectual Property.

- (f) Without limiting the generality of this Section 42.5, DB Co shall comply with the document control and security protocol submitted by DB Co pursuant to Section 11.5 and approved by the City, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by the City.

42.6 Exceptions

- (a) Information of a Party (the “**Proprietor**”), other than Government Sensitive Information and other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
- (i) the Proprietor advises the other Party to whom the information has been disclosed (the “**Confidant**”) that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
 - (iii) the information is a matter of public record or in the public domain;
 - (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
 - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant’s knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
 - (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
 - (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
 - (viii) the information is disclosed to the City upon a termination of this Project Agreement, pursuant to Section 38 or is otherwise required by the City for the purposes of performing (or having performed) the Works, including the design or construction of the New City Infrastructure, or any other operations or services the same as, or similar to, the Works; or
 - (ix) the information would not be exempt from disclosure under FIPPA.

42.7 Survival of Confidentiality

- (a) The obligations in Section 42.1 to Section 42.6 will cease on the date that is three years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

42.8 Confidentiality of Intellectual Property

- (a) Nothing in this Section 42 shall prevent the City from exercising any right granted to the City pursuant to Schedule 24 – Intellectual Property. The City shall have the right to disclose Confidential Information of DB Co Parties when exercising the rights granted pursuant to Schedule 24 – Intellectual Property in accordance therewith.

43. PERSONAL INFORMATION

43.1 General

- (a) DB Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) DB Co shall, and shall require each DB Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of the City and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform DB Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by the City.
- (c) DB Co shall, and shall require each DB Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including *FIPPA*, the *Personal Information Protection and Electronic Documents Act* (Canada), and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to DB Co, each DB Co Party or to the Works.
- (d) DB Co shall take all necessary and appropriate action, and shall require each DB Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 43.1.
- (e) DB Co shall allow the City on reasonable Notice to inspect any Personal Information in the custody or possession of DB Co or a DB Co Party and to audit DB Co and each DB Co Party's compliance with this Section 43 including the measures used by DB Co and each DB Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of the City with respect to DB Co or each DB Co Party's handling of Personal Information.
- (f) DB Co shall not subcontract or delegate to any third party any of the Works that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of the City and without obtaining written contractual commitments of such third party substantially the same as those of this Section 43.

43.2 Protection of Personal Information

- (a) DB Co shall implement and use, and shall require each DB Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that DB Co, the DB Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) DB Co shall and shall cause each DB Co Party to restrict access to Personal Information to only those authorized employees and permitted DB Co Parties that require access to such Personal Information to fulfil their job requirements in connection with the Works and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 43.
- (c) Upon termination of this Project Agreement or upon request of the City, whichever comes first, DB Co shall immediately cease all use of and return to the City or, at the direction of the City, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
- (d) To the extent that any of the Works involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Section 43.2(c), such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
- (e) DB Co shall immediately inform the City of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by DB Co or any DB Co Party or any other breach of this Section 43.
- (f) The City may from time to time require that DB Co and any DB Co Party or member of its or their staff execute and deliver within two Business Days after such request an agreement satisfactory to the City, acting reasonably, requiring such person to keep Personal Information confidential.

43.3 Personal Information

- (a) DB Co shall provide, and shall cause each DB Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to the City and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (b) To the extent of any conflict or inconsistency between this Section 43 and any other provision of the Project Agreement, this Section 43 shall prevail.
- (c) The obligations in this Section 43.3 shall survive the termination of this Project Agreement.

44. INSURANCE AND PERFORMANCE SECURITY

44.1 General Requirements

- (a) DB Co and the City shall comply with the provisions of Schedule 25 – Insurance and Performance Security Requirements.

44.2 No Relief from Liabilities and Obligations

- (a) Neither compliance nor failure to comply with the insurance provisions of this Project Agreement shall relieve DB Co or the City of their respective liabilities and obligations under this Project Agreement.

44.3 Performance Guarantee of Construction Guarantor

- (a) At all times during the Project Term and, in respect of the provisions described in Section 39.9, following the Project Term, DB Co shall ensure that a valid and binding Performance Guarantee of the Construction Guarantor in favour of DB Co and the City from the Construction Guarantor (or a party of comparable financial strength, capacity and stability, as determined by the City acting in its sole discretion) of the obligations of the Construction Contractor under the Design and Construction Contract and in the form of guarantee attached as Schedule 29 – Form of Performance Guarantee of Construction Guarantor, is in place and enforceable by the City. The Performance Guarantee of the Construction Guarantor will be delivered to, and held by, the Account Trustee.

45. TITLE

45.1 Title

- (a) Title to each item and part of the New City Infrastructure or the New MTO Infrastructure, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to the City (or as the City may direct) upon the receipt of such item on the Lands, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the New City Infrastructure and the New MTO Infrastructure or are to be affixed or attached to the New City Infrastructure and the New MTO Infrastructure prior to Substantial Completion shall pass to the City (or as the City may direct) at the time that such items are included in the New City Infrastructure and the New MTO Infrastructure or are to be affixed or attached to the New City Infrastructure and the New MTO Infrastructure.

46. INDEMNITIES

46.1 DB Co Indemnities to the City

- (a) DB Co shall indemnify and save harmless the City and its directors, officers, employees, agents and representatives and, in respect of (iii) and (iv) below, City Parties and each of their respective directors, officers, employees, agents and representatives, from and against any and all Direct

Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (i) [Intentionally Deleted]
- (ii) a failure by DB Co to achieve,
 - (A) East Substantial Completion by the East Scheduled Substantial Completion Date; or
 - (B) West Substantial Completion by the West Scheduled Substantial Completion Date;
- (iii) any physical loss of or damage to all or any part of the Lands, lands that are adjacent to the Lands (but that are not Lands), the New City Infrastructure, the New MTO Infrastructure, the Existing Infrastructure, the Stage 1 Connection Infrastructure, the RTG Works, or to any equipment, assets or other property related thereto;
- (iv) the death or personal injury of any person;
- (v) any physical loss of or damage to property or assets of any third party, including, for clarity, any physical loss of or damage to Existing Infrastructure, or New MTO Infrastructure;
- (vi) any other loss or damage of any third party;
- (vii) Injurious Affection claims made by third parties,
in the case of Sections 46.1(a)(ii) to 46.1(a)(vi), arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by DB Co or any act or omission of DB Co or any DB Co Party, and in the case of Section 46.1(a)(vii), arising, directly or indirectly, out of, or in consequence of, or involving or relating to, any breach of this Project Agreement by DB Co or any DB Co Party, except to the extent caused, or contributed to, by:
 - (viii) the breach of this Project Agreement by the City; or
 - (ix) in respect of Section 46.1(a)(ii), any deliberate or negligent act or omission of the City, any City Party or, to the extent related to Highway Works, MTO; or
 - (x) in respect of Sections 46.1(a)(iii), 46.1(a)(iv), 46.1(a)(v), 46.1(a)(vi) or 46.1(a)(vii), any act or omission of the City, any City Party or, to the extent related to Highway Works, MTO.
- (b) DB Co shall indemnify and save harmless the City and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by DB Co set out in Section 6.1.

- (c) DB Co shall indemnify and save harmless the City and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
- (i) the performance by DB Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of DB Co to obtain all necessary DB Co Permits, Licences, Approvals and Agreements in accordance with this Project Agreement;
 - (ii) any Contamination for which DB Co is responsible pursuant to Sections 18.2(a) or 18.2(b); or
 - (iii) the provision of assistance by the City to DB Co pursuant to Section 11.13(d),
- except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by the City or by any act or omission of the City, any City Party or, to the extent related to Highway Works, MTO.
- (d) Without prejudice to the City's rights under Section 36 and any other rights under this Project Agreement, if the City exercises its step-in rights under the Construction Contractor's Direct Agreement, DB Co shall indemnify the City for all obligations of DB Co assumed by the City under the Design and Construction Contract, as the case may be, and for all reasonable costs and expenses incurred by the City in relation to the exercise of the City's rights.
- (e) DB Co shall indemnify the City for damages suffered or incurred on account of (i) any payment not duly made by DB Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by DB Co; or (iii) an amount determined as payable by DB Co to the City under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by the City, or from the date identified (if any) applicable to an amount determined as payable by DB Co to the City under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.
- (f) DB Co shall defend, in accordance with the procedures of Section 46.3, and indemnify and save harmless the City, the City Parties, and any Governmental Authorities and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) any breach of Section 41.3;
 - (ii) any claim, suit, action or proceeding by a person alleging that (x) any Intellectual Property licensed or assigned to and used by the City, any City Party, RTG, any RTG Party, or any Governmental Authority pursuant to this Project Agreement; or (y) any Intellectual Property or other materials used by DB Co or any DB Co Party or any Subcontractor in the performance of the Works and the Project, infringes or

misappropriates any Intellectual Property rights of that person, other than where such claim, suit, action or proceeding is directly caused by,

- (A) the use of such Intellectual Property by the City not in accordance with this Project Agreement or the applicable Technical Information; or
 - (B) the use of such Intellectual Property by the City in combination with other products, software or equipment not supplied by or on behalf of DB Co or the Subcontractors and not authorized by any of them;
- (iii) any claim, suit, action or proceeding arising out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by any City Party, RTG, any RTG Party, or any Governmental Authority or due to the use of any materials, machinery or equipment in connection with the Works infringes any rights in or to any Intellectual Property of a third party unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by the relevant City Party, RTG, any RTG Party, otherwise than in accordance with the terms of this Project Agreement or the applicable Technical Information; and
- (iv) any claim, suit, action or proceeding by any Licensor alleging that DB Co or any DB Co Party or any Subcontractor has used any City Supplied Third Party Intellectual Property in breach of Sections 3.1(a)(ii), 3.1(b), 3.1(c) or 3.1(d) of Schedule 24 – Intellectual Property.
- (g) Without limiting and in addition to the obligations in Section 46.1(f), if, as a result of a claim under Section 46.1(f)(i) or Section 46.1(f)(ii), all or any part of any Intellectual Property licensed or assigned to and used by the City pursuant to this Project Agreement; or any Intellectual Property or other materials used by DB Co or any Subcontractor in the performance of the Works and the Project (any or all of the foregoing the “**Infringing Material**”) becomes, or in DB Co’s opinion is likely to be, enjoined from use, DB Co will:
 - (i) give Notice to the City of the same; and
 - (ii) at its sole option and expense, either:
 - (A) procure for itself and the City, to the extent required, the right to continue to use the infringing element or component of the Infringing Material as contemplated in this Project Agreement; or
 - (B) modify the infringing element or component of the Infringing Material so that it is non-infringing without materially affecting the quality, performance and functionality of such infringing element or component, or replace the infringing element or component with a substitute of materially equivalent quality, performance and functionality.

46.2 City Indemnities to DB Co

- (a) The City shall indemnify and save harmless DB Co and the DB Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all

Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by the City or any act or omission of any City Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by DB Co or by any act or omission of DB Co or any DB Co Party;
- (ii) any physical loss of or damage to all or any part of any property or assets of DB Co or any DB Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by the City or any deliberate or negligent act or omission of any City Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by DB Co or by any act or omission of DB Co or any DB Co Party;
- (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by the City or any deliberate or negligent act or omission of any City Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by DB Co or by any act or omission of DB Co or any DB Co Party; and
- (iv) Contamination for which the City is responsible pursuant to Section 18.2(c),

provided that there shall be excluded from the indemnity given by the City any liability for the occurrence of risks against which DB Co is required to insure under this Project Agreement to the extent of the proceeds available or that should have been available but for a failure by DB Co to comply with its obligations to properly insure under this Project Agreement.

- (b) The City shall indemnify and save harmless DB Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by the City set out in Section 6.2(a).
- (c) The City shall indemnify DB Co for damages suffered or incurred on account of (i) any payment not duly made by the City pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by the City; or (iii) an amount determined as payable by the City to DB Co under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by DB Co, or from the date identified (if any) applicable to an amount determined as payable by the City to DB Co under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

46.3 Conduct of Claims

- (a) This Section 46.3 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 Project Agreement. The

Party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.

- (b) 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 this Section 46, the Beneficiary shall give written Notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days after 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.
- (c) Subject to Sections 46.3(d), 46.3(e) and 46.3(f), 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 (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) 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. 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 and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) 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 46.3 relates.
- (e) 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 Project Agreement if:
 - (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 46.3(c);
 - (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 following the Indemnifier's receipt of the Notice from the Beneficiary under Section 46.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or

- (iii) the Indemnifier fails to comply in any material respect with Section 46.3(d).
- (f) 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 46.3(c) applies. For greater certainty, DB Co acknowledges and agrees that where the City is the Beneficiary, the City may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. 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 46.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (g) 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**") which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, 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 is 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.

- (h) Any person taking any of the steps contemplated by this Section 46.3 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 Project Agreement.

46.4 Mitigation – Indemnity Claims

- (a) For greater certainty, Section 53.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

47. LIMITS ON LIABILITY

47.1 Indirect Losses

- (a) Subject to Section 47.1(b) and without prejudice to the Parties' rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:
- (i) for punitive, exemplary or aggravated damages;
 - (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
 - (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,
- (collectively, "**Indirect Losses**").
- (b) With respect to the indemnity in Section 46.1(a)(ii) only, the exceptions for loss of use and loss of production in Section 47.1(a)(ii) and the exceptions in Section 47.1(a)(iii) shall not apply as a result of, or in relation to, the City's loss of use of the New City Infrastructure or a portion thereof, which for the purposes of Section 47.1(a)(ii), shall be Direct Losses.

47.2 No Liability in Tort

- (a) Subject to the indemnities provided herein, the City shall not be liable in tort to DB Co or any DB Co Party, and neither DB Co nor any DB Co Party shall be liable in tort to the City, any City Party or MTO in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

47.3 Sole Remedy

- (a) Nothing in this Project Agreement shall prevent or restrict the right of the City to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (b) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 – Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.
- (c) For clarity, the following shall apply with respect to the remedies and damages set out in the Project Agreement:
- (i) the amounts deducted from the Substantial Completion Payment pursuant to Schedule 34 – Mobility Matters shall be the City's sole remedy with respect to exceedances in Lane

Closures, or Bus Rapid Transit Lane Closures, which exceedances are contemplated in Schedule 34 – Mobility Matters;

- (ii) the liquidated damages paid by DB Co pursuant to Section 25.5 and the indemnity provided in Section 46.1(a)(ii) shall be the sole remedy in respect of the City's mobilization costs and other costs incurred by the City in accordance with of DB Co's failure to achieve East Substantial Completion by the East Scheduled Substantial Completion Date, and West Substantial Completion by the West Scheduled Substantial Completion Date, but, for clarity, shall not limit the City's rights otherwise provided for in Schedule 12 – Works Scheduling Requirements, or herein in connection with a termination pursuant to Section 36.1(a)(ii);
- (iii) the liquidated damages paid by DB Co pursuant to Section 12.4 shall be the sole remedy in respect of failure by DB Co to provide the Key Individuals named in Schedule 9 – Key Individuals immediately after Commercial Close;
- (iv) the right to withhold the East Warranty Cash Amount, the West Warranty Cash Amount and the Remaining Works Cash Amount, in each case, in accordance with Section 4.2, shall be the sole remedy of the City in respect of the failure by DB Co to deliver the East Warranty Letter of Credit, West Warranty Letter of Credit and/or the Remaining Works Letter of Credit, as applicable; and
- (v) the liquidated damages paid by DB Co pursuant to Section 11.17A shall be the City's sole remedy for the costs related to Minor Construction Defect, Medium Construction Defect, Major Construction Defect or Critical Construction Defect, but shall not otherwise diminish DB Co's obligation to perform the Warranty Work nor DB Co's obligations under the Interface Agreement.

47.4 Maximum Liability

- (a) Subject to Section 47.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 46 shall not exceed **\$[REDACTED]**. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to policies or performance security maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing. This maximum aggregate liability of DB Co shall be reduced by the amount of any liability of DB Co to RTG that is subject to the aggregate limit of liability under Section 2.4(b) of the Interface Agreement. Notwithstanding the foregoing, the City acknowledges that all liability of DB Co to RTG or the City under the Interface Agreement, whether incurred directly to RTG or indirectly through the City pursuant to Section 1.5(b)(iv), shall be treated as obligations of DB Co to the City for the purpose of the limitation of liability set out in the Performance Guarantee of Construction Contractor. Under no circumstance shall the City be entitled, whether under an indemnity listed in Section 46.1 or Section 1.5(b)(iv), to recover from DB Co any amounts or liability that is in duplication of amounts due and owing by DB Co under the Interface Agreement pursuant to a claim that has been made under the Interface Agreement.
- (b) DB Co's maximum aggregate liability in respect of all claims under Sections 46.1(a)(ii) and 25.5 shall not exceed **\$[REDACTED]**. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to

policies or performance security maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing. For certainty, this limit shall be included in the limit of liability under Section 47.4(a).

- (c) Nothing in this Section 47.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

48. DISPUTE RESOLUTION PROCEDURE

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 27 – Dispute Resolution Procedure.

49. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

49.1 DB Co Assignment

- (a) DB Co shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement or any Ancillary Document without the prior written consent of the City, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliate is a Restricted Person or a person whose standing or activities may compromise (i) the City's reputation or integrity, or (ii) the nature of the public transit system in the City of Ottawa or the Province of Ontario, so as to affect public confidence in the public transit system in one or more of the City of Ottawa, the Province of Ontario or the Project.
- (b) Section 49.1(a) shall not apply to the grant of any security for any loan made to DB Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if the City so requires.

49.2 City Assignment

- (a) The City may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which DB Co and the City are parties:
 - (i) as may be required to comply with Applicable Law;
 - (ii) in circumstances other than those described in Section 49.2(a)(i) with the prior written consent of DB Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to DB Co that it will perform all the obligations of the City hereunder and under any agreement in connection with this Project Agreement to which DB Co and the City are parties in respect of the period from and after the assignment.
- (b) The City shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of their interest in this Project Agreement in accordance with this Section 49.2.

49.3 Subcontracting

- (a) DB Co shall not subcontract any interest in this Project Agreement or the Design and Construction Contract, and shall not permit the Construction Contractor to subcontract any interest in the Design and Construction Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities may compromise (i) the City's reputation or integrity, or (ii) the nature of the public transit system in the City of Ottawa or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the City of Ottawa, the Province of Ontario or the Project.
- (b) DB Co shall not terminate, agree to the termination of or replace the Construction Contractor unless DB Co has complied with Sections 8.2(a), 49.3(c) and 49.3(d) or received the prior written consent of the City.
- (c) Subject to Section 49.3(d), if the Design and Construction Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor shall cease to act in relation to the Project, DB Co shall forthwith appoint a replacement, subject to the City's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor, and DB Co shall require, that any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Construction Contractor's Direct Agreement entered into by the person so replaced, unless any material variations are approved by the City, acting reasonably.

49.4 Changes in Ownership and Control

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the City's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the DB Co Group in relation to the decisions, management, actions or policies of DB Co or in relation to the operation, management and ownership of the Project.
- (b) No Change in Ownership of DB Co, or of any Control Party, shall be permitted:
 - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities may compromise (A) the City's reputation or integrity, or (B) the nature of the public transit system in the City of Ottawa or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the City of Ottawa, the Province of Ontario or the Project; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Works or the Governmental Activities.
- (c) In the event that a person having Direct or Indirect Power or Control over any member of the DB Co Group in relation to the decisions, management, actions or policies of DB Co or in relation to the operation, management and ownership of the Project becomes a Restricted Person, the City may:

- (i) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control; or
- (ii) in any other circumstance, require a Change in Ownership so that the Restricted Person shall be divested of its Direct or Indirect Power or Control,

in each case, on such terms as are satisfactory to the City, in its discretion.

- (d) DB Co shall provide Notice to the City of any Change in Ownership of DB Co or of any Control Party, as the case may be, that is not a Change in Control within 5 Business Days after such Change in Ownership, and such Notice shall include a statement identifying all persons with an ownership interest in DB Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership.
- (e) Subject to Sections 49.4(b), 49.4(c) and 49.4(d), no Change in Control of DB Co, or of any Control Party, shall be permitted without the prior written consent of the City.
- (f) DB Co shall provide Notice to the City of any proposed Change in Control of DB Co or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control, and such Notice shall include:
 - (i) a statement identifying all persons with an ownership interest in DB Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests in each case prior to and following any such proposed Change in Control; and
 - (ii) as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over DB Co or the relevant Control Party pursuant to such Change in Control.

Following the delivery to the City of the Notice referred to in this Section 49.4(f), DB Co shall provide the City with such other information pertaining to the proposed Change in Control as the City may reasonably request.

- (g) Upon request by DB Co and delivery of the information required by the City, the City shall advise DB Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities may compromise (i) the City's reputation or integrity, or (ii) the nature of the public transit system in the City of Ottawa or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the City of Ottawa, the Province of Ontario or the Project.
- (h) Notwithstanding the definition of "Control Parties" set out Schedule 1 – Definitions and Interpretation, this Section 49.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.

49.5 The City's Due Diligence

- (a) DB Co shall promptly reimburse the City for the City's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of the City pursuant to, or

the City's determination of DB Co's compliance with, Sections 49.1, 49.3 or 49.4, whether or not such consent is granted.

50. PROHIBITED ACTS

50.1 Definition

(a) The term "**Prohibited Act**" means:

- (i) offering, giving or agreeing to give to the City or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
 - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Project Agreement or any other agreement with the City or any public body in connection with the Project; or
 - (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with the City or any public body in connection with the Project,

provided that this Section 50.1(a)(i) shall not apply to DB Co or any DB Co Party (or anyone employed by or acting on their behalf) providing consideration to the City or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of DB Co under this Project Agreement or any other agreement with the City or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with the City or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by DB Co, or on its behalf or to its knowledge, the City or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the City, provided that this Section 50.1(a)(ii) shall not apply to a fee or commission paid by DB Co or any DB Co Party (or anyone employed by or acting on their behalf) to the City or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of DB Co under this Project Agreement or any other agreement with the City or any public body in connection with the Project without contravening the intent of this Section 50;
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with the City or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud the City or any other public body.

50.2 Remedies

- (a) If DB Co or any DB Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then the City shall be entitled to act in accordance with the following:
 - (i) if the Prohibited Act is committed by DB Co or by an employee acting under the direction of a director or officer of DB Co, then the City may give written Notice to DB Co and Section 36 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of DB Co acting independently of a direction of a director or officer of DB Co, then the City may give written Notice to DB Co and Section 36 shall apply, unless, within 30 days after receipt of such Notice, DB Co terminates the employee's employment and ensures that the relevant part of the Works shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a DB Co Party or by an employee of that DB Co Party not acting independently of a direction of a director or officer of that DB Co Party, then the City may give written Notice to DB Co and Section 36 shall apply, unless, within 30 days after receipt of such Notice, DB Co terminates the relevant Subcontract and ensures that the relevant part of the Works shall be performed by another person, where relevant, in accordance with Section 49.3;
 - (iv) if the Prohibited Act is committed by an employee of a DB Co Party acting independently of a direction of a director or officer of that DB Co Party, then the City may give Notice to DB Co and Section 36 shall apply, unless, within 30 days after receipt of such Notice, DB Co causes the termination of the employee's employment and ensures that the relevant part of the Works shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of DB Co or a DB Co Party by a person not specified in Sections 50.2(a)(i) to 50.2(a)(iv), then the City may give Notice to DB Co and Section 36 shall apply, unless, within 30 days after receipt of such Notice, DB Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Works shall be performed by another person.
- (b) Any Notice of termination under this Section 50.2 shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom the City believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 50.2, the City shall be entitled to recover from DB Co any Direct Loss sustained in consequence of any breach of this Section 50.

50.3 Permitted Payments

- (a) Nothing contained in this Section 50 shall prevent DB Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

50.4 Notification

- (a) DB Co shall notify the City of the occurrence and details of any Prohibited Act promptly on DB Co becoming aware of its occurrence.

50.5 Replacement of DB Co Party

- (a) Where DB Co is required to replace any DB Co Party pursuant to this Section 50, the party replacing such DB Co Party shall from the time of the replacement be deemed to be a DB Co Party and the provisions of this Project Agreement shall be construed accordingly.

51. NOTICES

51.1 Notices to Parties

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

If to DB Co:

East West Connectors GP
[REDACTED]

Attn.: [REDACTED]
Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]
Email: [REDACTED]

If to the City:

City of Ottawa
110 Laurier Ave West
Ottawa, Ontario K1P 1J1
Mail code: [REDACTED]

Attn.: [REDACTED]

With an electronic copy, for information purposes only, to: [REDACTED]

51.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 51.1, where any Notice is to be provided or submitted to the City Representative or the DB Co Representative it shall be provided or submitted by sending the same by registered mail, email, facsimile or by hand, as follows:

If to the DB Co Representative:

[REDACTED]

Attn.: **[REDACTED]**

Email: **[REDACTED]**

If to the City Representative:

City of Ottawa

110 Laurier Ave West

Ottawa, Ontario K1P 1J1

Mail code: **[REDACTED]**

Attn.: **[REDACTED]**

With an electronic copy, for information purposes only, to: **[REDACTED]**

51.3 Facsimile and Email

- (a) Where any Notice is provided or submitted to a Party via facsimile or email, an original of the Notice sent via facsimile or email shall promptly be sent by regular mail, registered mail or hand delivered. For greater certainty, a Notice given via facsimile or email shall not be invalid by reason only of a Party's failure to comply with this Section 51.3.

51.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 51.1 or 51.2 by prior Notice to the other Party, 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.

51.5 Deemed Receipt of Notices

- (a) Subject to Sections 51.5(b), 51.5(c) and 51.5(d):
- (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;
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile; and

- (iv) a Notice given by email shall be deemed to have been received on the day it is transmitted by email.
- (b) 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 51.
- (c) If any Notice delivered by hand, email, 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.
- (d) 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.
- (e) A Notice given by email shall be deemed to have been received by the recipient on the day it is transmitted only if the sender's email "Sent" folder indicated that the transmission of such Notice was delivered.
- (f) In addition to the above methods of delivery for a Notice, each Notice shall be delivered via the secure document-sharing site approved by the City.

51.6 Service on the City

- (a) Where any Notice is required to be served on the City, the obligation to serve such Notice shall be fulfilled by serving it on the City in accordance with the provisions of this Section 51.

52. EMERGENCY MATTERS

52.1 Emergency

- (a) From Financial Close until the last Substantial Completion Date, upon the occurrence of an Emergency, DB Co shall comply with the Construction Safety Management Plan.
- (b) From and after each Substantial Completion Date, upon the occurrence of an Emergency, DB Co shall comply with its Construction Safety Management Plan in accordance with the Output Specifications.
- (c) If, in respect of any Emergency, the City notifies DB Co that it requires compliance with any additional or overriding procedures as may be determined by the City or any other statutory body, then DB Co shall, subject to Schedule 22 – Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application and on the basis that such procedures shall take precedence to the extent that they overlap with the procedures mentioned in Sections 52.1(a) or 52.1(b)).

53. GENERAL

53.1 Amendments

- (a) This Project 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 Project Agreement.

53.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Project 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 either 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.

53.3 Relationship Between the Parties

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between the City and any DB Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between the City and any representative or employee of DB Co or the DB Co Parties.
- (b) The Parties further agree that:
 - (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent that it is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
 - (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation Board or other similar levies with respect to any persons employed or engaged by the other Party;
 - (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and

- (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

53.4 General Duty to Mitigate

- (a) The City and DB Co shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Project Agreement.

53.5 Actual Knowledge

- (a) Except where limited to actual knowledge and/or such knowledge which they, at law, may from time to time, be deemed to have, DB Co and the City shall, for all purposes of this Project Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by the directors, officers and senior management of DB Co and in the case of the City, its directors, officers and senior management, and the City Representative or the DB Co Representative, as applicable. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the "knowledge" of DB Co or of the City shall be construed in a manner consistent with the foregoing sentence.

53.6 Entire Agreement

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

53.7 No Reliance

- (a) Each of the Parties acknowledge that:
 - (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
 - (ii) this Section 53.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

53.8 Severability

- (a) Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project 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 Project Agreement. If any such provision of this Project 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 Project Agreement as near as possible to its original intent and effect.

53.9 Enurement

- (a) This Project Agreement and any other agreement entered into in connection with the Project to which both the City and DB Co are parties shall enure to the benefit of, and be binding on, the City and DB Co and their respective successors and permitted transferees and assigns.

53.10 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project 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) Subject to Schedule 27 – Dispute Resolution Procedure, both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Project Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

53.11 Cumulative Remedies

- (a) Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

53.12 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 Project Agreement.

53.13 Costs

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement.

53.14 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Project Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.
- (b) For greater certainty, all correspondence, Notices, drawings, test reports, certificates, specifications, information, operation and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English

53.15 Proof of Authority

- (a) The City and DB Co each reserve the right to require any person executing this Project Agreement on behalf of the other Party to provide proof, in a form acceptable to the City or DB Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind the City or DB Co, as applicable.

53.16 Counterparts

- (a) This Project 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 the other Party an original signed copy of this Project Agreement which was so faxed.

53.17 Time is of the Essence

- (a) Time is of the essence in this Project Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Project Agreement as of the date first above written.

THE CITY OF OTTAWA

Per:

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

EAST WEST CONNECTORS GP

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
 - 1.1 “**Account Trustee**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
 - 1.2 “**Activity**” or “**Activity Id**” shall mean an element of the Works performed during the course of the Project. An Activity has an expected duration and cost requirements, and shall be the lowest level of any Works Schedule.
 - 1.3 “**Additional Contractor**” means any independent contractor (not being, for the avoidance of doubt, any of the Third Party Contractors, DB Co or any DB Co Party, or RTG or any RTG Party) or the City’s own forces, engaged by the City to carry out the Additional Works.
 - 1.4 “**Additional Works**” means those works or services, in relation to any of the New City Infrastructure, New MTO Infrastructure, or any Existing Infrastructure owned by the City or MTO, which are not Works and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
 - 1.5 “**Adjacent Developments**” means any development works or like activity carried out during the Project Term by or on behalf of any third party adjacent to the Lands, New City Infrastructure or New MTO Infrastructure and which otherwise affects or may potentially affect any part of the Works, the Lands or the New City Infrastructure or New MTO Infrastructure.
 - 1.6 “**Adjudicator**” has the meaning given in Section 6.1 of Schedule 27 – Dispute Resolution Procedure.
 - 1.7 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of DB Co, shall include each of the unitholders, shareholders, partners or owners of DB Co, as applicable, and any person or entity controlling, controlled by or under common control with DB Co where “control” of any person or entity shall mean the ownership, directly or indirectly, of securities of such person or entity having the power to elect a majority of directors or similar authority or to otherwise control the decisions made on behalf of such person or entity.
 - 1.8 “**Aggregate Actual Bus Rapid Transit Lane Closures**” has the meaning given in Schedule 34 – Mobility Matters.
 - 1.9 “**Aggregate Actual Bus Rapid Transit Lane Closures Cost**” has the meaning given in Schedule 34 – Mobility Matters.
 - 1.10 “**Aggregate Actual Lane Closures**” has the meaning given in Schedule 34 – Mobility Matters.
 - 1.11 “**Aggregate Actual Lane Closures Cost**” has the meaning given in Schedule 34 – Mobility Matters.
 - 1.1 “**Aggregate Vehicle Kilometres Availability Ratio**” for any period *n* means the total Revenue Service Vehicle Kilometres in period *n* plus the number of Scheduled Revenue Service Vehicle Kilometres which were “missed” or not achieved during period *n* due to causes or factors other

than a Construction Defect, divided by the total Scheduled Revenue Service Vehicle Kilometres for period n . For clarity, the formula is provided below:

$$AVKR_n = \frac{Rkm_n + NPCCKm_n}{Skm_n}$$

Where:

$AVKR_n$ Means the Aggregate Vehicle Kilometres Availability Ratio for the relevant period n ;

Rkm_n Means the total amount of Revenue Service Vehicle Kilometres for period n ;

$NPCCKm_n$ Means the number of Scheduled Revenue Service Vehicle Kilometres which were “missed” or not achieved during period n due to causes or factors other than a Construction Defect; and

Skm_n Means the total Scheduled Revenue Service Vehicle Kilometres for period n .

1.12 “**Ancillary Documents**” means the Design and Construction Contract.

1.13 “**Anticipated Final Completion Date**” means either the East Anticipated Final Completion Date or West Anticipated Final Completion Date.

1.14 “**Anticipated Substantial Completion Date**” means either the East Anticipated Substantial Completion Date or West Anticipated Substantial Completion Date.

1.15 “**Applicable Law**” means:

- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
- (b) any Authority Requirement; and
- (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,

in each case, in force in the Province of Ontario, or otherwise binding on DB Co, any DB Co Party, the City, or any City Party.

1.16 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.

1.17 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.

1.18 “**Apprenticeship Plan**” has the meaning given in Section 11.23(a) of the Project Agreement.

1.19 “**Archaeological Reports**” means, collectively, the following reports:

(a) [REDACTED];

(b) [REDACTED];

- (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [REDACTED];
 - (f) [REDACTED];
 - (g) [REDACTED];
 - (h) [REDACTED];
 - (i) [REDACTED]; and
 - (j) [REDACTED].
- 1.20 “**Architect**” means an architect licensed by the Ontario Association of Architects to practice in the Province of Ontario.
- 1.21 “**Art Cash Allowance**” has the meaning given in Section 11.30(f) of the Project Agreement.
- 1.22 “**Art Cash Allowance Items**” means the work and activities identified as being subject to the Art Cash Allowance, to be performed by DB Co pursuant to Article 12 of Part 1 of Schedule 15-2 of the Output Specifications.
- 1.23 “**As-built Drawings**” means drawings prepared by DB Co to reflect the installed, constructed or commissioned conditions of the Works, in a format and with content and details that the City (with respect to As-built Drawings related to the East Works and West Works) or MTO (with respect to As-built Drawings related to the Highway Works), acting reasonably, consider appropriate.
- 1.24 “**As-built Works Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.25 “**Associated Liabilities**” has the meaning given in Section 4.17(b) of the Project Agreement.
- 1.26 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority and includes, for clarity, any direction or instruction from Transport Canada arising from any contractual arrangement or board orders involving Transport Canada with respect to the System Infrastructure corridor.
- 1.27 “**Background Information**” means any and all drawings, reports (including the Environmental Reports, the Archaeological Reports, the Geotechnical Reports, the Cultural Heritage Reports, and the Environmental Assessments and any other report given or otherwise referred to in the Output Specifications), studies, plans, data, documents, or other information, given or made available to DB Co or any DB Co Party by the City or any City Party, or which was obtained from or through any other sources prior to the date of the Project Agreement.
- 1.28 “**Bank**” has the meaning given in Schedule 30 – Insurance Trust Agreement.

- 1.29 “**Bankruptcy and Insolvency Act (Canada)**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time.
- 1.30 “**Beneficiary**” has the meaning given in Section 46.3(a) of the Project Agreement.
- 1.31 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act*, S.O. 1992, c.23 (Ontario), as amended from time to time.
- 1.32 “**Bus Rapid Transit**” or “**BRT**” means the existing network of transit traffic lanes including those segments identified in Section 1.6 of Schedule 34 – Mobility Matters.
- 1.33 “**Bus Rapid Transit Lane Closure**” has the meaning given in Schedule 34 – Mobility Matters.
- 1.34 “**Bus Rapid Transit Lane Closure Adjustment**” has the meaning given in Schedule 34 – Mobility Matters.
- 1.35 “**Business Corporations Act (Ontario)**” means the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended from time to time.
- 1.36 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Ottawa, Ontario.
- 1.37 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.38 “**Canadian GAAP**” shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.
- 1.39 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.40 “**Cash Allowance**” means either the Utility Company Works Cash Allowance or the Art Cash Allowance, as the case may be.
- 1.41 “**Category 1 Utility Company**” means any one of:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED]; and
 - (e) [REDACTED].

- 1.42 “**Certificate of Recognition**” means the certification issued by IHSA to a person confirming that the health and safety management systems of such person comply with the terms, provisions and conditions of the COR Program.
- 1.43 “**Certification Services**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.44 “**Certification Services Variation**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.45 “**Certified H&S Inspector**” means an individual who is an employee or contractor of the IHSA and has the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 15.2 of the Project Agreement.
- 1.46 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person, to direct or cause the direction of the management, actions or policies of such person.
- 1.47 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the date of the Project Agreement.
- 1.48 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.49 “**City**” has the meaning given in the introductory paragraph of the Project Agreement.
- 1.50 “**City Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with rail transit and other similar services, including the operation and maintenance of a live rail transit system on the System Infrastructure corridor and Existing Confederation Line.
- 1.51 “**City Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.52 “**City Design Team**” means any of the City, its agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design

- reviews, design evaluation, or design consultation processes with respect to the New City Infrastructure or the New MTO Infrastructure or the City Activities, but excluding DB Co and any DB Co Party.
- 1.53 “**City Engineer**” means the engineer appointed by the City in connection with, among other things, acceptance of the New Municipal Infrastructure Works.
- 1.54 “**City Event of Default**” has the meaning given in Section 37.1(a) of the Project Agreement.
- 1.55 “**City HR Policy**” means the City’s human resources policies and guidelines, as they may be amended from time to time and provided to DB Co in writing.
- 1.56 “**City Jointly Developed Materials**” has the meaning given in Section 41.4(a)(i) of the Project Agreement.
- 1.57 “**City Party**” means any of the City and its respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the City Activities, including RTG and RTG Parties in performance of the RTG City Party Works, but excluding RTG and RTG Parties in performance of the RTG Stage 1 PA Works notwithstanding the definition of City Activities, and excluding DB Co and any DB Co Party, and the “the City Parties” shall be construed accordingly.
- 1.58 “**City Permits, Licences, Approvals and Agreements**” means only those the City permits, licences, approvals and agreements which are the responsibility of the City to obtain as set out in Schedule 35 - Permits, Licences, Approvals and Agreements, but for greater certainty shall not include any permission, consent, approval, certificate, permit, licence, agreement or authorization not set out in Schedule 35 - Permits, Licences, Approvals and Agreements but required by the terms of any such item set out in such Appendix.
- 1.59 “**City PLAA Deadline**” has the meaning given in Section 11.8(e) of the Project Agreement
- 1.60 “**City Representative**” means the person designated as such by the City on or prior to the date of the Project Agreement and any permitted replacement.
- 1.61 “**City Supplied Third Party Intellectual Property**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.62 “**City Taxes**” means taxes, or payments in lieu of taxes, imposed on the City and HST and property taxes for which the City is responsible pursuant to Section 4.11 of the Project Agreement.
- 1.63 “**City Trade-Marks**” means any and all Trade-Marks used by the City in any manner whatsoever.
- 1.64 “**CA**” means the *Construction Act*, R.S.O. 1990, c. C.30, as amended from time to time.
- 1.65 “**CMMS**” has the meaning given in Section 25.7(a) of the Project Agreement.
- 1.66 “**Commercial Close**” means the date of the Project Agreement.

- 1.67 “**Commissioning Submittals**” means the commissioning submittals described in Section 1.6 of Schedule 14 – Testing & Commissioning.
- 1.68 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 – Testing & Commissioning;
 - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
 - (c) recommended by the manufacturer of any part of the New City Infrastructure or the New MTO Infrastructure; and
 - (d) required to be included in a Testing & Commissioning Program by the Independent Certifier or the City Representative during its development pursuant to Section 25.2 of the Project Agreement.
- 1.69 “**Companies’ Creditors Arrangement Act (Canada)**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended from time to time.
- 1.70 “**Compensation Event**” has the meaning given in Section 33.1(a) of the Project Agreement.
- 1.71 “**Compensation Payment**” means the City Default Termination Sum, the DB Co Default Termination Sum or the Non-Default Termination Sum.
- 1.72 “**Completion Holdback**” means either the East Completion Holdback or West Completion Holdback, as the case may be.
- 1.73 “**Complex Structure**” means any post-tensioned or pre-tensioned structure that has undergone significant structural alteration making it difficult for personnel at the Site to predict the direction of forces or likely collapse mechanism to be experienced by such structure in connection with any Demolition of all or any part of such structure.
- 1.74 “**Complex Structure Demolition**” means any Demolition where any one or more of the following is applicable:
- (a) significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, altered or removed;
 - (b) large penetrations are being created through slabs;
 - (c) any Demolition may cause the collapse of any building or structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a building or structure and potentially jeopardize the safety of workers, staff or the general public using such building or structure;
 - (d) the Demolition of any building or structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any building or structure; and
 - (e) any apparent or inferable risk associated with the Demolition poses a significant risk to workers, the public or adjacent property.

- 1.75 “**Concurrent Delays**” means delays to the critical path caused by two or more independent which (a) occur at the same time and continue for the same period of time, and (b) which affect a Scheduled Substantial Completion Date, or Scheduled Final Completion Date.
- 1.76 “**Concurrent Delay Direct Costs**” mean the Direct Costs associated with so Concurrent Delays and referred to in clauses 1.1(i) through (x), inclusive, of Appendix A to Schedule 22 of this Project Agreement.
- 1.77 “**Condition Assessment**” means a close-up visual inspection of all structure elements to confirm and record severity and extent of material defects and suspected performance deficiencies of the various components in accordance with Ontario Structure Inspection Manual (OSIM).
- 1.78 “**Condition Assessment and Recommendations Report**” means a report documenting the findings of the Condition Assessment and providing the details of the recommended rehabilitation, repair or replacement method.
- 1.79 “**Confederation Line East Extension**” has the meaning given in the recitals to the Project Agreement.
- 1.80 “**Confederation Line West Extension**” has the meaning given in the recitals to the Project Agreement.
- 1.81 “**Confidant**” has the meaning given in Section 42.6(a)(i) of the Project Agreement.
- 1.82 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement.
- 1.83 “**Construction Access Management Plan**” means DB Co’s plan to manage construction and Site access in accordance with the requirements in Part 7 of Schedule 15-2.
- 1.84 “**Construction Activities**” means construction, rehabilitation, Reinstatement Work, rectification work, and any other aspect of the Works that:
- (a) comprises the alteration, augmenting, upgrading, construction, completion, inspection, calibration, testing or commissioning of any part of the New City Infrastructure and the New MTO Infrastructure;
 - (b) comprises the assessment of any New City Infrastructure or New MTO Infrastructure;
 - (c) may affect the structural integrity of any New City Infrastructure or New MTO Infrastructure, and including any such aspect of the Works carried out as part of any Force Majeure event, Relief Event, Variation, or Innovation Proposal accepted by the City; or
 - (d) comprises Construction Clearing and Grubbing.
- 1.85 “**Construction Certificate**” means a certificate with contents described in Attachment 2 to Appendix A of Schedule 10 – Review Procedure.

- 1.86 “**Construction Clearing and Grubbing**” means the stage of the Works in which vegetation and debris is cleared from the Lands (clearing) and a root rake or similar device is employed to remove roots remaining in the soil (grubbing).
- 1.87 “**Construction Contractor**” means [REDACTED] engaged by DB Co to perform the Works and any substitute construction contractor engaged by DB Co as may be permitted by the Project Agreement.
- 1.88 “**Construction Contractor’s Direct Agreement**” means the direct agreement between the City, DB Co, the Construction Contractor and the Construction Guarantor in the form set out in Schedule 5 – Construction Contractor’s Direct Agreement.
- 1.89 “**Construction Defect**” means any deficiency, defect or error in the Works or failure of the Works to conform to the Project Agreement (including for clarity any defect in the Existing Infrastructure which has been fully incorporated into the Works to the extent such defect was patent at the time of incorporation into the Works, but without prejudice to the risk allocation set out in Section 18.8 of the Project Agreement), or any deficiency, defect or error in relation to any Product procured by DB Co or any DB Co Party, in each case, arising from a non-compliance by DB Co or any DB Co Party with the requirements of the Project Agreement.
- 1.90 “**Construction Document Submittals**” has the meaning given in Section 11.1(d)(ii) of the Project Agreement.
- 1.91 “**Construction Guarantor**” means [REDACTED].
- 1.92 “**Construction Latent Defect**” has the meaning given in Section 11.16(b)(iii) of the Project Agreement.
- 1.93 “**Construction Period**” means that period of time commencing on Financial Close and ending on the earlier of (i) the Termination Date, or (ii) the latest Final Completion Date.
- 1.94 “**Construction Period Payments**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.95 “**Construction Period Payment Application**” has the meaning given in Schedule 21 – Construction Period Payments
- 1.96 “**Construction Period Quality Failures**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.97 “**Construction Period Performance Criteria**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.98 “**Construction Management Plan**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.99 “**Construction Safety Management Plan**” means the plans to be prepared by DB Co to manage the safety of the Works, as described in Schedule 11 – Integrated Management System Requirements.

- 1.100 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.101 “**Control Party**” means:
- (a) any person with any form of direct ownership interest in DB Co; and
 - (b) [REDACTED].
- 1.102 “**Copyrights**” means all copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by multinational treaties or conventions.
- 1.103 “**COR Certification**” means, in respect of a person, receipt by such person of its (i) Certificate of Recognition; and (ii) Letter of Good Standing.
- 1.104 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by the City.
- 1.105 “**COR-Certified Construction DB Co Party**” has the meaning given in Section 11.25(a)(ii) of the Project Agreement.
- 1.106 “**COR-Qualified Construction DB Co Party**” means:
- (a) where the Construction Contractor is a single legal entity, the Construction Contractor;
 - (b) where the Construction Contractor is a joint venture, all members of the joint venture;
 - (c) where the Construction Contractor is a partnership, all partners of the partnership; or
 - (d) the parent(s) of the entity or entities in (a), (b) or (c) above, as applicable,
- provided that each such person has current OHSAS 18001 Accreditation in good standing.
- 1.107 “**Cost of the Financing**” means all costs and expenses incurred in connection with the Financing pursuant to the Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in Schedule 32 – Financial Model.
- 1.108 “**Cost of the Works**” means the cost to DB Co of performing the Works as set out in Schedule 32 – Financial Model and shall include all amounts to be included in the Cost of the Works set out in the Project Agreement.
- 1.109 “**CN**” means the Canadian National Railway Company, and its successors.

- 1.110 “**CPI**” means, as at the date of the Project Agreement, CPI XFET and, thereafter, the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 - Dispute Resolution Procedure, most closely resembles such index.
- 1.111 “**CPI XFET**” means the Consumer Price Index excluding food, energy and the effect of changes in indirect taxes.
- 1.112 “**CPI_{in}**” is the value of CPI on January 1 of the relevant year, to be determined by reference to the relevant index in the month immediately preceding the indexation date.
- 1.113 “**CPI_o**” is the value of CPI at Financial Close, to be determined by reference to the relevant index in the month immediately preceding Financial Close.
- 1.114 “**Critical Construction Defect**” means a Construction Defect in respect of the System Infrastructure which (a) results in a material disruption to operation of Confederation Line East or Confederation Line West which has caused the Aggregate Vehicle Kilometer Availability Ratio in relevant period prior to rectification to be lower than the Aggregate Vehicle Kilometer Availability Ratio constituting a Major Construction Defect or (b) results in a material disruption to access to any Station (including by System Users, understanding, however, that failure of any escalator or elevator shall not be deemed to be a material disruption provided there is a least one elevator is operational).
- 1.115 “**Critical Construction Period Quality Failure**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.116 “**Critical Items**” has the meaning given in Section 12.1 of Schedule 27 – Dispute Resolution Procedure.
- 1.117 “**Critical Non-Conformance**” means any Non-Conformance, or combination of Medium Non-Conformances, that:
- (a) is persistent, ongoing and repeated; or
 - (b) in the reasonable opinion of the City, by its continued existence or through the process of rectification, would:
 - (i) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to vehicular or rail traffic flow;
 - (ii) prejudice or is reasonably expected to materially prejudice the performance of any City Activities;
 - (iii) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the New City Infrastructure, New MTO Infrastructure, Existing Infrastructure, and / or Stage 1 Connection Infrastructure, including System Users, volunteers and visitors to the New City Infrastructure, New MTO Infrastructure, Existing Infrastructure and/or Stage 1 Connection Infrastructure, and members of the public;

- (iv) materially increase the City’s risk or transfer risk to the City or any City Party;
 - (v) materially adversely affect the ability of any the City Party to perform their activities as permitted or contemplated by the Project Agreement;
 - (vi) materially adversely affect or change the critical path of the Project as defined in the Works Schedule, adversely affect DB Co’s ability to achieve Substantial Completion by a Scheduled Substantial Completion Date, require a material resequencing of the Works or cause any delay in achieving any Substantial Completion; or
 - (vii) potentially compromise the reputation or integrity of the City and/or any City Party or the nature of the public transit system in one or more of the City of Ottawa or the Province of Ontario so as to affect public confidence in the public transit system in the City of Ottawa, the Province of Ontario or the Project.
- 1.118 “**Critical Path(s)**” means the sequence of Activities determining the minimum time needed to complete the Works
- 1.119 “**Crown**” means Her Majesty the Queen in right of Ontario.
- 1.120 “**Crown Agency Act (Ontario)**” means the *Crown Agency Act*, R.S.O. 1990, c. 48, as amended from time to time.
- 1.121 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.122 “**Cultural Heritage Reports**” means, collectively, the following reports:
- (a) [REDACTED];
 - (b) [REDACTED]; and
 - (c) [REDACTED].
- 1.123 “**Current PBS**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.124 “**Cut and Cover**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.125 “**DB Co**” has the meaning given in the introductory paragraph of the Project Agreement.
- 1.126 “**DB Co Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.127 “**DB Co Commissioning**” means the commissioning activities to be carried out by DB Co prior to the issuance of the relevant Substantial Completion Certificate (in the case of New City Infrastructure and New MTO Infrastructure, other than the Remaining Works), and prior to the issuance of the West Final Completion Certificate (in the case of the Remaining Works) in accordance with the Testing & Commissioning Program.
- 1.128 “**DB Co Commissioning Tests**” means all Commissioning Tests required to be performed by DB Co pursuant to a Testing & Commissioning Program.

- 1.129 “**DB Co Construction Event of Default**” means a DB Co Event of Default relating to a failure or breach by DB Co to perform, observe or comply with any covenants, agreements, obligations or liabilities with respect to the Works, excluding a default by the Construction Guarantor under the Performance Guarantee of Construction Guarantor.
- 1.130 “**DB Co Construction Period Payment Documentation**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.131 “**DB Co Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.132 “**DB Co Event of Default**” has the meaning given in Section 36.1(a) of the Project Agreement.
- 1.133 “**DB Co Group**” means DB Co together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of DB Co.
- 1.134 “**DB Co Party**” means:
- (a) the Construction Contractor;
 - (b) any person engaged by DB Co and/or the Construction Contractor from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Works (or any of them); and
 - (c) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “**DB Co Parties**” shall be construed accordingly.
- 1.135 “**DB Co Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Works in accordance with the Project Agreement and as required by Applicable Law, and including those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations which are the responsibility of DB Co to obtain as set out in Schedule 35 – Permits, Licences, Approvals and Agreements or which is the responsibility of DB Co to perform or fulfill as set out in Schedule 35 – Permits, Licences, Approvals and Agreements and the Output Specifications and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including, to the extent applicable, all Development Approvals, Railway Approvals and Utility Agreements, the Encroachment Permits, and the approval of the Fire Marshal of Ontario), needed to perform the Works in accordance with the Project Agreement and as required by Applicable Law, but other than the City Permits, Licences, Approvals and Agreements.
- 1.136 “**DB Co Proposal Extracts**” means the documents attached as Schedule 13 – DB Co Proposal Extracts.
- 1.137 “**DB Co Representative**” means the person designated as such by DB Co on or prior to Commercial Close and any permitted replacement.
- 1.138 “**DB Co Response Period**” has the meaning given in Schedule 36 – Interface Agreement.

- 1.139 “**DB Co Utility Works**” means the works relating to Utility Infrastructure carried out by DB Co in connection with or as part of the Project Operations, including design, construction, installation, commissioning, protection, removal and relocation of duct banks, poles, pole lines, conduits, gas pipes, oil pipes, sewers and telephone and telecommunication lines, and related and ancillary works.
- 1.140 “**DB Co Variation Notice**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.141 “**Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.142 “**Debt Service Amount**” means, for any period, the principal and interest payable by DB Co or any DB Co Party to the Lenders in the normal course under the Lending Agreements, provided that at any time where any portion of the interest payable to the Lenders is subject to a Hedging Agreement between DB Co and a Hedge Provider, interest payable on account of such portion of interest payable to the Lenders shall be calculated based on the fixed rate payable by DB Co under such Hedging Agreement without regard to whether such fixed rate is payable directly to a Lender or to the Hedge Provider under the relevant Hedging Agreement and all references to interest payable to the Lenders under this Project Agreement shall be construed accordingly.
- 1.143 “**Delay Event**” has the meaning given in Section 32.1(a) of the Project Agreement.
- 1.144 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.145 “**Demolition Default Event**” has the meaning given in Section 11.26(b) of the Project Agreement.
- 1.146 “**Demolition Guidelines**” means those guidelines set forth in the document entitled “Professional Engineers Providing Services for Demolition of Buildings and other Structures” published by the Professional Standards Committee established by the Professional Engineers of Ontario and having a publication date of April, 2011.
- 1.147 “**Demolition Plan**” means a plan or other document prepared by a professional engineer, limited licence holder or provisional licence holder in accordance with subsection (3) of the Performance Standards Regulation with respect to the Demolition of a building or structure, and includes any changes to the plan or other document that are made by a professional engineer, limited licence holder or provisional licence holder.
- 1.148 “**Demolition Requirements**” has the meaning given in Section 11.26(a) of the Project Agreement.
- 1.149 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by DB Co in accordance with Section 11.26(a)(iv)(A) of the Project Agreement.
- 1.150 “**Demolition Supervisor**” has the meaning given in Section 11.26(a)(ii) of the Project Agreement.
- 1.151 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.152 “**Design and Construction Contract**” means the design and construction contract between DB Co and the Construction Contractor dated on or about the date of Financial Close.

- 1.153 “**Design and Construction Certification Procedure**” means the process for review and issuance of Design Certificates and Construction Certificates in accordance with Schedule 10 – Review Procedure.
- 1.154 “**Design and Construction Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.155 “**Design Certificate**” means a certificate with contents described in Attachment 1 to Appendix A of Schedule 10 – Review Procedure.
- 1.156 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations, and other data prepared or obtained by DB Co relating to the design, construction, testing or monitoring of the New City Infrastructure and the New MTO Infrastructure, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.157 “**Design Development**” means that process for DB Co’s development of design for the Project described in Section 11.1 of the Project Agreement.
- 1.158 “**Design Development Submittal**” has the meaning given in Section 11.1(d)(i) of the Project Agreement.
- 1.159 “**Design Life**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.160 “**Design Management Plan**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.161 “**Design Manager**” means the DB Co Key Individual with the functions described in Schedule 9 – Key Individuals.
- 1.162 “**Design Report(s)**” means reports written to document engineering designs by providing parameters, conditions, needs and requirements to be taken into account in the design of the element in discussion and document the design process and describe the completed design.
- 1.163 “**Design Team**” means [REDACTED] engaged by DB Co to design the New City Infrastructure and the New MTO Infrastructure and any substitute design team engaged by DB Co as may be permitted by the Project Agreement.
- 1.164 “**Design Workshops**” means those workshops undertaken in accordance with Section 1.8 of Schedule 10 – Review Procedure.
- 1.165 “**Development Approvals**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Agreements, required from time to time for construction of the New City Infrastructure and the New MTO Infrastructure.
- 1.166 “**Direct Cost**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.167 “**Direct Losses**” means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a

substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses. For clarity, Direct Losses shall not include any "Deductions" (as such term is defined in the Stage 1 Project Agreement) made from any payment to RTG under the Stage 1 Project Agreement.

1.168 **“Direct or Indirect Power or Control”** means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:

- (a) ownership, beneficial or otherwise, of greater than [REDACTED] percent of any of the shares, units or equity interests of a person;
- (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual's ownership, beneficial or otherwise, is equal to or exceeds [REDACTED] percent of the voting securities, units or equity interests of such person; or
- (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.

1.169 **“Discriminatory Change in Law”** means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:

- (a) transit systems, roads or highways, including rail transit systems, roads or highways, whose design, construction, and financing are procured by a contract similar to the Project Agreement in relation to other similar transit systems;
- (b) the New City Infrastructure or New MTO Infrastructure in relation to other transit systems, including rail transit systems, roads or highways;
- (c) DB Co in relation to other persons; or
- (d) persons undertaking projects for design, construction, and financing that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,

except that such Change in Law shall not be a Discriminatory Change in Law:

- (e) where it is in response to any act or omission on the part of DB Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
- (f) solely on the basis that its effect on DB Co is greater than its effect on other companies; or
- (g) where such Change in Law is a change in Taxes that affects companies generally.

- 1.170 “**Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.171 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 – Dispute Resolution Procedure.
- 1.172 “**Division**” means one of the following: East Works, West Works, Highway Works, or Remaining Works.
- 1.173 “**Drainage**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.174 “**Draw Amount**” has the meaning given in Section 11.18D of the Project Agreement.
- 1.175 “**Earlier Scheduled Substantial Completion Date**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.176 “**Earned Value**” has the meaning given in Schedule 21 – Construction Period Payments.
- 1.177 “**East Anticipated Final Completion Date**” means the date (which, for greater certainty, will be on or before the East Scheduled Final Completion Date) on which DB Co anticipates that East Final Completion will be achieved.
- 1.178 “**East Anticipated Substantial Completion Date**” has the meaning given in Section 25.5(a)(i) of the Project Agreement.
- 1.179 “**East Completion Holdback**” has the meaning given in Section 25.10(a) of the Project Agreement.
- 1.180 “**East Construction Defect**” has the meaning given in Section 11.15(a) of the Project Agreement.
- 1.181 “**East DB Co Commissioning**” means the DB Co Commissioning in respect of the East Works other than the Highway Works.
- 1.182 “**East Final Completion**” means the completion of the East Works in accordance with the Project Agreement, including completion of all East Minor Deficiencies.
- 1.183 “**East Final Completion Countdown Notice**” has the meaning given in Section 25.13(a)(i) of the Project Agreement.
- 1.184 “**East Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.14(g) of the Project Agreement in respect of East Final Completion.
- 1.185 “**East Final Completion Date**” means the date on which East Final Completion is achieved as evidenced by the East Final Completion Certificate, as such date shall be stated therein.
- 1.186 “**East Final Completion Notice**” has the meaning given in Section 25.14(b) of the Project Agreement.
- 1.187 “**East Further Revised Substantial Completion Date**” has the meaning given in Section 25.5(j) of the Project Agreement.

- 1.188 “**East Initial Countdown Notice**” has the meaning given in Section 25.5(a)(i) of the Project Agreement.
- 1.189 “**East Look-ahead Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.190 “**East Minor Deficiencies**” has the meaning given in Section 25.10(a) of the Project Agreement.
- 1.191 “**East Minor Deficiencies List**” has the meaning given in Section 25.10(a) of the Project Agreement.
- 1.192 “**East Revised Substantial Completion Date**” has the meaning given in Section 25.5(g)(i) of the Project Agreement.
- 1.193 “**East Scheduled Final Completion Date**” means the date that is March 14, 2025 following the East Substantial Completion Date.
- 1.194 “**East Scheduled Substantial Completion Date**” means November 26, 2024, as such date may be amended pursuant to Section 32 of the Project Agreement.
- 1.195 “**East Subsequent Notice**” has the meaning given in Section 25.5(g)(i) of the Project Agreement.
- 1.196 “**East Substantial Completion**” means the point at which, in respect of the East Works, (i) the New City Infrastructure, other than the Remaining Works, have been completed in accordance with the Project Agreement; and (ii) all requirements for East Substantial Completion described in the East Testing & Commissioning Plan, other than in respect of East Minor Deficiencies, the Remaining Works, the Remaining Works Minor Deficiencies, and Trial Running have been satisfied.
- 1.197 “**East Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.4(d) of the Project Agreement.
- 1.198 “**East Substantial Completion Date**” means the date on which East Substantial Completion is achieved as evidenced by the East Substantial Completion Certificate, as such date shall be stated therein.
- 1.199 “**East Substantial Completion Notice**” has the meaning given in Section 25.4(b)(i) of the Project Agreement.
- 1.200 “**East Substantial Completion Payment**” means the amount of \$[REDACTED], less the East Completion Holdback as at the East Substantial Completion Payment Date.
- 1.201 “**East Substantial Completion Payment Date**” means the date that is 2 Business Days after the East Substantial Completion Date.
- 1.202 “**East Testing & Commissioning Plan**” means the Testing & Commissioning Plan for the East Works included in the Testing & Commissioning Program.
- 1.203 “**East Warranty Letter of Credit**” has the meaning given in Section 11.18(a)(i) of the Project Agreement.

- 1.204 “**East Warranty Cash Amount**” has the meaning given in Section 4.2(c)(i) of the Project Agreement.
- 1.205 “**East Warranty Period**” means:
- (a) in respect of the East Works other than New Municipal Infrastructure, a period beginning on the East Substantial Completion Date and expiring on the date 2 years after such East Substantial Completion Date; and
 - (b) in respect of each New Municipal Construction Component comprising part of the East Works, a period beginning on the New Municipal Infrastructure Component Acceptance Date for such New Municipal Construction Component, and expiring on the date 2 years after such New Municipal Infrastructure Component Acceptance Date.
- 1.206 “**East Warranty Work**” has the meaning given in Section 11.17(a)(i) of the Project Agreement.
- 1.207 “**East Works**” means the Works as it relates to the Confederation Line East Extension, as generally described in Article 19 of Part 1 of Schedule 15-2.
- 1.208 “**Electronic Data Management System**” or “**EDMS**” means a management system as described in Article 3 of Schedule 10 – Review Procedure.
- 1.209 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.
- 1.210 “**Encroachment Permits**” means the encroachment permits which DB Co is required to obtain from MTO to enable and authorize, among other things, DB Co to perform the Works.
- 1.211 “**Emergency**” means any situation, event, occurrence, multiple occurrences or circumstances:
- (a) that:
 - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any persons (including System Users and City Parties) or any part of or the whole of the New City Infrastructure, the New MTO Infrastructure, the Existing Infrastructure or the Stage 1 Connection Infrastructure;
 - (ii) causes or may cause damage or harm to property, buildings and/or equipment;
 - (iii) constitutes a hostage situation or state of emergency declared as such by the City Representative or the City (acting reasonably);
 - (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the New City Infrastructure or New MTO Infrastructure, any part of the Lands, the conduct of Works, or the conduct of Governmental Activities; or
 - (v) constitutes a period of transition to or from war,

- and which, in the opinion of the City, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or
- (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) an Emergency Service Provider.
- 1.212 “**Emergency Response Plan**” means the existing City of Ottawa Emergency Response Plan for the existing LRT system as amended and modified by the Emergency Management provisions in Schedule 15-2 Part 1.
- 1.213 “**Emergency Service Providers**” means any Police Service, firefighting service, ambulance service, armed forces or other authority with emergency service authority pursuant to Applicable Law which may require access to the New City Infrastructure or New MTO Infrastructure from time to time.
- 1.214 “**Encumbrances**” means the Encumbrances listed in Schedule 16 - Encumbrances and any other encumbrances deemed to be Encumbrances as described in and for the purposes set out in Section 17.2(d) of the Project Agreement.
- 1.215 “**Environmental Assessments**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.216 “**Environmental Protection Act (Ontario)**” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended from time to time.
- 1.217 “**Environmental Management Plan**” means has the meaning given in Schedule 17 – Environmental Obligations.
- 1.218 [Not used]
- 1.219 “**Environmental Reports**” means, collectively, the following reports:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [REDACTED];
 - (f) [REDACTED];
 - (g) [REDACTED];
 - (h) [REDACTED];
 - (i) [REDACTED];
 - (j) [REDACTED];

- (k) [REDACTED];
- (l) [REDACTED];
- (m) [REDACTED];
- (n) [REDACTED];
- (o) [REDACTED];
- (p) [REDACTED];
- (q) [REDACTED];
- (r) [REDACTED];
- (s) [REDACTED];
- (t) [REDACTED];
- (u) [REDACTED];
- (v) [REDACTED];
- (w) [REDACTED];
- (x) [REDACTED];
- (y) [REDACTED];
- (z) [REDACTED];
- (aa) [REDACTED];
- (bb) [REDACTED];
- (cc) [REDACTED];
- (dd) [REDACTED];
- (ee) [REDACTED];
- (ff) [REDACTED];
- (gg) [REDACTED];
- (hh) [REDACTED];
- (ii) [REDACTED];
- (jj) [REDACTED];

- (kk) [REDACTED];
- (ll) [REDACTED];
- (mm) [REDACTED];
- (nn) [REDACTED];
- (oo) [REDACTED];
- (pp) [REDACTED];
- (qq) [REDACTED];
- (rr) [REDACTED];
- (ss) [REDACTED];
- (tt) [REDACTED];
- (uu) [REDACTED];
- (vv) [REDACTED];
- (ww) [REDACTED];
- (xx) [REDACTED];
- (yy) [REDACTED];
- (zz) [REDACTED];
- (aaa) [REDACTED];
- (bbb) [REDACTED];
- (ccc) [REDACTED];
- (ddd) [REDACTED];
- (eee) [REDACTED];
- (fff) [REDACTED];
- (ggg) [REDACTED];
- (hhh) [REDACTED]; and
- (iii) [REDACTED].

1.220 “**Erosion and Sediment Control Plan**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.

- 1.221 “**ESA**” means the *Endangered Species Act*, 2007 (Ontario).
- 1.222 “**Estimate**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.223 “**Excise Tax Act (Canada)**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended from time to time.
- 1.224 “**Executive Council Act (Ontario)**” means the *Executive Council Act*, R.S.O. 1990, c. E. 25, as amended from time to time.
- 1.225 “**Existing Adjacent Structures**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.226 “**Existing Confederation Line**” has the meaning given in the recitals to the Project Agreement.
- 1.227 “**Existing Contamination**” has the meaning given in Section 18.2(a) of the Project Agreement.
- 1.228 “**Existing Infrastructure**” means existing public realm, road, highway, Utility Infrastructure, railway infrastructure, drainage works, landscaping, infrastructure situated on the Lands, owned by the MTO, the City, Utility Companies, Railway Companies, or any other third party, but excluding the Stage 1 Connection Infrastructure.
- 1.229 “**Expiry Date**” means the first anniversary of the latest Final Completion Date.
- 1.230 “**External IMS Audit**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.231 “**Facilities**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.232 “**Factory Acceptance Test**” or “**FAT**” has the meaning given in Schedule 14 – Testing & Commissioning.
- 1.233 “**Federal Lands**” means:
- (a) lands that belong to Her Majesty in right of Canada, or that Her Majesty in right of Canada has the power to dispose of, and all waters on and airspace above those lands, other than lands under the administration and control of the Commissioner of Yukon, the Northwest Territories or Nunavut;
 - (b) the following lands and areas:
 - (i) the internal waters of Canada, in any area of the sea not within a province,
 - (ii) the territorial sea of Canada, in any area of the sea not within a province,
 - (iii) the exclusive economic zone of Canada, and
 - (iv) the continental shelf of Canada;

- (c) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and that are subject to the Indian Act, and all waters on and airspace above those reserves or lands.
- 1.234 “**Final Completion**” means either East Final Completion or West Final Completion, as applicable.
- 1.235 “**Final Completion Certificate**” means a certificate to be issued by the Independent Certifier in accordance with Section 25.14 of the Project Agreement.
- 1.236 “**Final Completion Countdown Notice**” means either the East Final Completion Countdown Notice or West Final Completion Countdown Notice, as applicable.
- 1.237 “**Final Completion Date**” means either the East Final Completion Date or West Final Completion Date, as applicable.
- 1.238 “**Final Completion Notice**” means either the East Final Completion Notice or West Final Completion Notice, as applicable.
- 1.239 “**Final Design Development**” or “**FDD**” has the meaning given in Schedule 10 – Review Procedure.
- 1.240 “**Final New Municipal Infrastructure Works Acceptance Certificate**” means the certificate issued by the City Engineer to DB Co confirming New Municipal Infrastructure Works Acceptance.
- 1.241 “**Final New Municipal Infrastructure Works Requirements**” has the meaning given in Section 11.27(h) of the Project Agreement.
- 1.242 “**Financial Administration Act (Ontario)**” means the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended from time to time.
- 1.243 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.244 “**Financial Close Target Date**” means April 25, 2019, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.245 “**Financial Model**” means the computer spreadsheet [REDACTED] for the Project incorporating statements of DB Co’s cashflows including all expenditure, revenues, financing and taxation of the Works together with, if applicable, the profit and loss accounts and balance sheets for DB Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.246 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable Taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations.
- 1.247 “**Financing**” means the financing with the Lenders, that is consistent in all material respects with Schedule 32 - Financial Model and the Project Agreement, to finance the Project.

- 1.248 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario), R.S.O. 1990, c. F.31, as amended from time to time.
- 1.249 “**Float**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.250 “**Force Majeure**” has the meaning given in Section 35.1(a) of the Project Agreement.
- 1.251 “**Funeral, Burial and Cremations Services Act (Ontario)**” means the *Funeral, Burial and Cremations Services Act*, S.O. 2002, c.33, as amended from time to time.
- 1.252 “**Geotechnical Reliant Reports**” means:
- (a) those reports listed in the definition of “Geotechnical Reports” as items (a) – (c), (g) – (m), (p), and (s) – (z); and
 - (b) in respect of those reports listed in the definition of “Geotechnical Reports” as items (d) – (f), (n) and (aa), the geotechnical borehole data included in such reports, excluding any data interpretation or extrapolation expressed therein, as clarified in the reliance letters included the Background Information pertaining to such reports.
- 1.253 “**Geotechnical Instrumentation and Monitoring Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.254 “**Geotechnical Reports**” means, collectively, the following geotechnical reports:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [REDACTED];
 - (f) [REDACTED];
 - (g) [REDACTED];
 - (h) [REDACTED];
 - (i) [REDACTED];
 - (j) [REDACTED];
 - (k) [REDACTED];
 - (l) [REDACTED];
 - (m) [REDACTED];
 - (n) [REDACTED];

- (o) [REDACTED];
- (p) [REDACTED];
- (q) [REDACTED];
- (r) [REDACTED];
- (s) [REDACTED];
- (t) [REDACTED];
- (u) [REDACTED];
- (v) [REDACTED];
- (w) [REDACTED];
- (x) [REDACTED];
- (y) [REDACTED];
- (z) [REDACTED]; and
- (aa) [REDACTED].

- 1.255 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial and rail safety standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.256 “**Government Entity**” means any one or more of the Province and MOI.
- 1.257 “**Government Sensitive Information**” means any information which is designated as such by the City from time to time, or which a reasonable person having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, and (ii) any record, the disclosure of which could be injurious to the interests of the City.
- 1.258 “**Governmental Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands, New City Infrastructure and New MTO Infrastructure by any Governmental Authority or Emergency Service Provider, and includes the City Activities.
- 1.259 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the City, any aspect of the performance of the Project Agreement, the operation of the System or the Governmental Activities, in each case to the extent

- it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.260 “**Guaranteed Price**” is the amount referred to in Section 3.1(a) of the Project Agreement.
- 1.261 “**Guideway**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents
- 1.262 “**Handover**” has the meaning given in Appendix B of Schedule 10 – Review Procedure
- 1.263 “**H&S Certification Default Event**” has the meaning given in Section 11.25(b) of the Project Agreement.
- 1.264 “**H&S Certification Maintenance Plan**” has the meaning given in Section 11.25(b)(vii)(B) of the Project Agreement.
- 1.265 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 11.25(b)(vi)(B) of the Project Agreement.
- 1.266 “**H&S Construction Inspection**” has the meaning given in Section 15.2(a) of the Project Agreement.
- 1.267 “**H&S Construction Inspection Report**” has the meaning given in Section 15.1(b) of the Project Agreement.
- 1.268 “**H&S Construction Re-Inspection**” has the meaning given in Section 15.1(c)(ii) of the Project Agreement.
- 1.269 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 15.1(c)(iii) of the Project Agreement.
- 1.270 “**Hazardous Substances**” means any contaminant, pollutant, mould, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined in or identified pursuant to any Applicable Law.
- 1.271 “**Hedge Provider**” means a person that has entered into a Hedging Agreement with DB Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.272 “**Hedging Agreement**” means an agreement relating to the hedging of interest rate risk entered into by DB Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.273 “**Highway Construction Defect**” has the meaning given in Section 11.15(c) of the Project Agreement.
- 1.274 “**Highway Corridor Lands**” has the meaning given in Schedule 20 – Lands.
- 1.275 “**Highway DB Co Commissioning**” means the DB Co Commissioning in respect of the Highway Works.
- 1.276 “**Highway Testing & Commissioning Plan**” means the Testing & Commissioning Plan for the Highway Works included in the Testing & Commissioning Program.

- 1.277 “**Highway Traffic Act (Ontario)**” means the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended from time to time.
- 1.278 “**Highway Works**” means the Works as it relates to the New MTO Infrastructure, as generally described in Article 19 of Part 1 of Schedule 15-2.
- 1.279 “**Hold Points**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.280 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.281 “**IHSA**” means Infrastructure Health and Safety Association, a not-for-profit occupational safety organization formed on January 1, 2010 that provides health and safety training material and services to Ontario construction, electrical utilities and transportation industries, and is accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing, or such other person so accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing.
- 1.282 “**IMS Audit**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.283 “**IMS Director**” means that individual identified as such in Schedule 9 – Key Individuals, and such replacements or substitutes as may be permitted from time to time in accordance with this Project Agreement.
- 1.284 “**Income Tax Act (Canada)**” means the *Income Tax Act*, R.S.C., 1985, c. 1, as amended from time to time.
- 1.285 “**Indemnifiable Taxes**” has the meaning given in Section 4.17(b) of the Project Agreement.
- 1.286 “**Indemnifier**” has the meaning given in Section 46.3(a) of the Project Agreement.
- 1.287 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.288 “**Independent Certifier Agreement**” means the contract entered into between DB Co, the City and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.289 “**Independent Safety Assessor**” means an independent party appointed by DB Co to assess:
- (a) the safety and security of the Works prior to Substantial Completion; and
 - (b) changes to the New City Infrastructure following Substantial Completion, if any.
- 1.290 “**Indirect Losses**” has the meaning given in Section 47.1(a) of the Project Agreement.
- 1.291 “**Infringing Material**” has the meaning given in Section 46.1(g) of the Project Agreement.
- 1.292 “**Initial Capital Investment Amount**” has the meaning given in Schedule 21 – Construction Period Payments.

- 1.293 “**Initial Countdown Notice**” has the meaning given in Section 25.5(a) of the Project Agreement.
- 1.294 “**Injurious Affection**” has the meaning given in the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended from time to time.
- 1.295 “**Innovation Proposal**” has the meaning given in Section 31.2(b) of the Project Agreement.
- 1.296 “**Internal IMS Audit**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.297 “**Intrusion and Access Control System**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.298 “**Inspection and Test Plan**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.299 “**Insurance**” means the insurance contemplated in Schedule 25 – Insurance and Performance Security Requirements.
- 1.300 “**Insurance Policies**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.301 “**Insurance Proceeds**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.302 “**Insurance Trust Account**” means [REDACTED] at [REDACTED].
- 1.303 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between the City, the Lenders’ Agent, DB Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.304 “**Integrated Management Plans**” or “**IMP**” have the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.305 “**Integrated Management System**” and “**IMS**” have the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.306 “**Intellectual Property**” means all intellectual and industrial property, including without limitation: (i) Trade-Marks; (ii) patents; (iii) copyrights; (iv) inventions, whether or not patentable, whether or not reduced to practice or whether or not yet made the subject of a pending patent application or applications; (v) ideas and conceptions of potentially patentable subject matter, including, without limitation, any patent disclosures, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications; (vi) trade secrets and confidential, technical or business information (including ideas, formulas, compositions, designs, inventions, and conceptions of inventions whether patentable or unpatentable and whether or not reduced to practice); (vii) whether or not confidential, technology (including know-how and show-how), manufacturing and production processes and techniques, methodologies, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, marketing and business data, pricing and cost information, business and marketing plans; (xiv) copies and tangible embodiments of all the foregoing, in whatever form or medium; (ix) all rights to obtain and rights to apply for any of the foregoing and all rights therein provided by multinational treaties or conventions; (x) all rights under any agreements or instruments with respect to items in (i) to (ix)

above; and (xi) all rights to sue and recover and retain damages and costs and attorneys' fees for present and past infringement or other violation of any of the intellectual property rights hereinabove set out.

- 1.307 **“Intellectual Property Rights”** means all right, title and interest in, to and under the Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after Commercial Close created, brought into existence, acquired, used or intended to be used by DB Co, any Subcontractor or by other third parties (for such third parties' use by or on behalf of or for the benefit of DB Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the New City Infrastructure and the New MTO Infrastructure (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction); or
 - (b) the Project Agreement.
- 1.308 **“Interest Reference Rate”** means the reference benchmark rate of interest identified in the Financial Model and used in the calculation of the Project Debt Interest Cost, and for greater clarity, is the base rate of interest exclusive of any stated or imbedded spread, (including credit, swap or other types of spread) or fees.
- 1.309 **“Interface Agreement”** means that interface agreement entered into by DB Co, the City and RTG upon the execution and delivery of this Project Agreement, in the form attached hereto as Schedule 36 – Interface Agreement.
- 1.310 **“Irrecoverable Tax”** has the meaning given in Section 4.13(b) of the Project Agreement.
- 1.311 **“Issued For Construction”** has the meaning given in Section 3.12 of Schedule 10 – Review Procedure.
- 1.312 **“Jointly Developed Materials”** has the meaning given in Section 41.4(a) of the Project Agreement.
- 1.313 **“Key Individuals”** means those DB Co Parties listed in Schedule 9 - Key Individuals.
- 1.314 **“Key Works Milestones”** has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.315 **“Lands”** has the meaning given in Schedule 20 – Lands.
- 1.316 **“Lane Closure”** has the meaning given in Schedule 34 – Mobility Matters.
- 1.317 **“Lane Closure Adjustment”** has the meaning given in Schedule 34 – Mobility Matters.
- 1.318 **“Latent Defect Warranty Period”** means the balance of the period after a Warranty Period during which DB Co remains responsible for correcting and Making Good of any Construction Latent Defect in accordance with Section 11.16(b)(iii) of the Project Agreement.
- 1.319 **“Legislative Holdback”** means the basic holdback to be retained pursuant to section 22(1) of the CA. For greater certainty, the amount of the holdback required by Part IV of the CA may be

- reduced by the amount of the holdback which has been paid by DB Co or the Construction Contractor in respect of Subcontracts certified complete under Section 33 of the CA in accordance with Section 25 of the CA.
- 1.320 “**Lenders**” means any or all of the persons acting arm’s length to DB Co and each DB Co Party who provide the Financing, and for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns and any Affiliate of DB Co or a DB Co Party.
- 1.321 “**Lenders’ Agent**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.322 “**Lenders’ Consultant**” means any consultant appointed from time to time by the Lenders. Nothing contained in the Project Documents and no action taken by the Lenders’ Consultant in connection with the Works or the Project Documents shall constitute direction and/or control by the City, DB Co or the Lenders.
- 1.323 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between the City, the Lenders’ Agent and DB Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.324 “**Lending Agreements**” means any or all of the agreements or instruments to be entered into by DB Co or any of its Affiliates relating to the Financing, including, for greater certainty, the Security Documents and the Hedging Agreements.
- 1.325 “**Letter of Credit Provider**” means the provider of a Standby Letter of Credit, and “**Letter of Credit Provider(s)**” means all providers of the Standby Letter(s) of Credit.
- 1.326 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by IHSA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.327 “**Licensor**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.328 “**Limitations Act, 2002 (Ontario)**” means the *Limitations Act, 2002*, S.O. 2002, c.24, as amended from time to time.
- 1.329 “**Limited Modification Rights**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.330 “**Listed DB Co PLAA**” means those DB Co Permits, Licences, Approvals and Agreements listed in Appendix A to Schedule 35 – Permits, Licences, Approvals and Agreements.
- 1.331 “**LMSF**” means the light maintenance storage facility further described in Schedule 15 – Output Specifications.
- 1.332 “**Load-Path Diagram**” means a graphically illustrated diagram that indicates in all relevant detail (including by use of colour-coded arrows indicating the directions of forces caused by dead loads, live loads, vertical loads and lateral loads) how the structural loads are transferred throughout a building or structure that is to be the subject of a Demolition.
- 1.333 “**Longstop Date**” has the meaning given in Section 36.1(a)(ii) of the Project Agreement.

- 1.334 “**Look-ahead Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.335 “**Maintenance Instructions**” means the maintenance data prepared and delivered by DB Co to the City pursuant to Section 25.7 of the Project Agreement.
- 1.336 “**Major Construction Defect**” means any Construction Defect in respect of the System Infrastructure which, when measuring its most severe consequences during the period prior to rectification of such Construction Defect, causes an Aggregate Vehicle Kilometres Availability Ratio of (i) between [REDACTED]% and [REDACTED]% during Peak Period(s), or (ii) between [REDACTED]% and [REDACTED]84% on a full day basis.
- 1.337 “**Major Existing Third Party Infrastructure**” means the following infrastructure:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [REDACTED];
 - (f) [REDACTED];
 - (g) [REDACTED];
 - (h) [REDACTED];
 - (i) [REDACTED];
 - (j) [REDACTED];
 - (k) [REDACTED];
 - (l) [REDACTED];
 - (m) [REDACTED];
 - (n) [REDACTED];
 - (o) [REDACTED];
 - (p) [REDACTED];
 - (q) [REDACTED];
 - (r) [REDACTED];
 - (s) [REDACTED];

- (t) [REDACTED];
- (u) [REDACTED];
- (v) [REDACTED];
- (w) [REDACTED];
- (x) [REDACTED];
- (y) [REDACTED];
- (z) [REDACTED];
- (aa) [REDACTED];
- (bb) [REDACTED];
- (cc) [REDACTED];
- (dd) [REDACTED];
- (ee) [REDACTED];
- (ff) [REDACTED];
- (gg) [REDACTED];
- (hh) [REDACTED];
- (ii) [REDACTED];
- (jj) [REDACTED];
- (kk) [REDACTED];
- (ll) [REDACTED];
- (mm) [REDACTED];
- (nn) [REDACTED];
- (oo) [REDACTED];
- (pp) [REDACTED];
- (qq) [REDACTED]; and
- (rr) [REDACTED].

1.338 “**Make Good**”, “**Made Good**”, “**Making Good**” and derivatives thereof, means, as applicable, repairing, restoring, refurbishing, rehabilitating, removing and replacing or performing filling

operation on: (a) the Works as required under the Project Agreement; or (b) any existing components disturbed (including Existing Infrastructure and Stage 1 Connection Infrastructure) due to the Works, to at least the condition existing at the commencement of the Works, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.

- 1.339 “**Medium Construction Defect**” means any Construction Defect in respect of the System Infrastructure which, when measuring its most severe consequences during the period prior to rectification of such Construction Defect, causes an Aggregate Vehicle Kilometres Availability Ratio of (i) between [REDACTED]% and [REDACTED]% during Peak Period(s), or (ii) between [REDACTED]% and [REDACTED]% on a full day basis.
- 1.340 “**Medium Non-Conformance**” means any Non-Conformance, or combination of Minor Non-Conformances, that:
- (a) contains significant deficiencies or does not generally conform with the requirements of the Project Agreement; or
 - (b) the continued existence of which is reasonably expected to result in DB Co becoming unable to satisfy the requirements of Substantial Completion.
- 1.341 “**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), R.S.O. 1990, c. M.56, as amended from time to time.
- 1.342 “**Milestone**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.343 “**Minor Construction Defect**” means any Construction Defect that is not a Medium Construction Defect, Major Construction Defect or Critical Construction Defect.
- 1.344 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Substantial Completion, and that would not materially impair:
- (a) the public’s, System Users’, or the City’s use, normal operation, and enjoyment of the New City Infrastructure or any third parties use and enjoyment of the New MTO Infrastructure;
 - (b) the performance of the Governmental Activities;
 - (c) safety, security, or traffic or track flow on the New City Infrastructure or New MTO Infrastructure in any relevant respect; or
 - (d) the performance of maintenance services in respect of the System Infrastructure by RTG.
- For greater certainty Minor Deficiencies shall not be applicable to nor shall Minor Deficiencies include Minor Deficiency Nominated Signalling Subcontractor Works.
- 1.345 “**Minor Deficiency Nominated Signalling Subcontractor Works**” means defects, deficiencies and items of outstanding work arising from or related to the Nominated Signalling Subcontractor Works.

1.346 “**Minor Deficiencies List**” has the meaning given in Section 25.10 of the Project Agreement.

1.347 “**Minor Non-Conformance**” means any Non-Conformance that:

- (a) generally conforms to the requirements of the Project Agreement, but in which immaterial deficiencies have been found that require correction in order to bring the Works fully into compliance with the Project Agreement; or
- (b) the continued existence of which is not reasonably expected to result in DB Co becoming unable to satisfy the requirements for Substantial Completion but may result in a Minor Deficiency.

1.348 “**Mislocated Utility Infrastructure**” means:

- (i) Utility Infrastructure that is discovered more than 200mm horizontally from the provided surveyed point via any Quality Level A investigation in the Subsurface Utility Engineering (SUE) Report;
- (ii) Utility Infrastructure that is discovered more than 150mm vertically from the provided surveyed point via any Quality Level A investigation in a Subsurface Utility Engineering (SUE) Report;
- (iii) Utility Infrastructure that is discovered more than 1500mm horizontally from the location provided via any Quality Level B investigation in a Subsurface Utility Engineering (SUE) Report;
- (iv) Utility Infrastructure that is discovered more than 2000mm horizontally from the location provided in the Quality Level C investigation in a Subsurface Utility Engineering (SUE) Report;
- (v) Utility Infrastructure that is discovered more than 3000mm horizontally from the location provided in the Quality Level D investigation in a Subsurface Utility Engineering (SUE) Report;
- (vi) Utility Infrastructure that is owned by the City that is discovered more than 600mm vertically from the location provided in a Subsurface Utility Engineering (SUE) Report; and
- (vii) Utility Infrastructure that is discovered more than 3000mm horizontally from the location provided in the Roll Plans.

1.349 “**Modification**” has the meaning given in Schedule 24 – Intellectual Property.

1.350 “**MOECC**” means the Ontario Ministry of the Environment and Climate Change, and any successor ministry thereto.

1.351 “**MOI**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.

- 1.352 “**MOL**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Labour, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.353 “**Monthly Progress Report**” means a monthly progress report submitted by DB Co in accordance with Part 2 of Schedule 33 – Works Reports
- 1.354 “**MTO**” means Her Majesty the Queen in right of Ontario, as represented by the Minister of Transportation, and includes any successors thereto or persons exercising delegate power and such Minister’s authority.
- 1.355 “**MTO Jointly Developed Materials**” has the meaning given in Section 41.4(a)(ii) of the Project Agreement.
- 1.356 “**MTO Standards**” means the standards of MTO set out in Schedule 15 – Output Specifications.
- 1.357 “**Navigation Protection Act (Canada)**” means the *Navigation Protection Act*, R.S.C., 1985, c. N-22, as amended from time to time.
- 1.358 “**NCC**” means the National Capital Commission.
- 1.359 “**NCC Act**” means the *National Capital Act (Canada)*.
- 1.360 “**NCC Agreement In Principle**” means the agreement made between the City and the NCC on the 10th of May, 2016.
- 1.361 “**NCC Approval In Principle**” means the approval issued to the City by the NCC under the *National Capital Act* for the Western Light Rail Train (WLRT) project on January 23, 2017.
- 1.362 “**NCC FLUDTA**” means the federal land use, design and transaction approval of the NCC under the NCC Act required in respect of the change of use of, or erection, alteration, extension or demolition of a building or other work on, Crown Lands which are “public lands” within the “National Capital Region” (as such terms are defined in the NCC Act), as indicated in Schedule 35 – Permits, Licenses, Approvals and Agreements, which approval may include and be subject to conditions.
- 1.363 “**Near-Critical Activity(s)**” or “**Near Critical Path(s)**” means those Activities with a Float of less than 10 calendar days.
- 1.364 “**New City Infrastructure**” means the System Infrastructure and the New Municipal Infrastructure.
- 1.365 “**New MTO Infrastructure**” means the new, modified or improved infrastructure, as described in Schedule 15 - Output Specifications, to be installed, relocated, upgraded, reinstated, restored, downsized, designed and/or built by DB Co for MTO in accordance with the Project Agreement and in accordance with the applicable MTO Standards.
- 1.366 “**New Municipal Infrastructure**” means the new, modified or improved infrastructure described as such in Schedule 15 – Output Specifications, including as generally described in Section 2.3 of Part 1 Schedule 15-2, and all associated data, records, drawings, plans, reports and systems related thereto, all as described in the Project Agreement.

- 1.367 “**New Municipal Infrastructure Component**” means a component or element of the New Municipal Infrastructure, as set out in the Works Schedule.
- 1.368 “**New Municipal Infrastructure Component Acceptance**” means the point in time at which the City Engineer determines that an individual New Municipal Infrastructure Component has been completed in accordance with the Project Agreement and all requirements for New Municipal Infrastructure Component Acceptance described in the Output Specifications in respect of New Municipal Infrastructure Works have been satisfied; the New Municipal Infrastructure Component Works Requirements have been satisfied; and the issuance by the City Engineer of a New Municipal Infrastructure Component Acceptance Certificate.
- 1.369 “**New Municipal Infrastructure Component Acceptance Certificate**” means, in respect of an individual New Municipal Infrastructure Component, the certificate issued by the City Engineer to DB Co confirming acceptance of the applicable New Municipal Infrastructure Component.
- 1.370 “**New Municipal Infrastructure Component Acceptance Date**” means, in respect of an individual New Municipal Infrastructure Component, the date on which the City Engineer has issued a New Municipal Infrastructure Component Acceptance Certificate in respect of such New Municipal Infrastructure Component.
- 1.371 “**New Municipal Infrastructure Component Acceptance Notice**” has the meaning given in Section 11.27(d) of this Project Agreement.
- 1.372 “**New Municipal Infrastructure Component Works Requirements**” has the meaning given in Section 11.27(d) of this Project Agreement.
- 1.373 “**New Municipal Infrastructure Works**” means the design, construction, installation, testing and completion of the New Municipal Infrastructure as set out in the Output Specifications.
- 1.374 “**New Municipal Infrastructure Works Acceptance**” means the receipt by DB Co of New Municipal Infrastructure Component Acceptance Certificates for all New Municipal Infrastructure Components and completion and satisfaction of all Final New Municipal Infrastructure Works Requirements.
- 1.375 “**New Municipal Infrastructure Works Acceptance Date**” means the date in which New Municipal Infrastructure Works Acceptance is achieved.
- 1.376 “**New Municipal Infrastructure Works Component Countdown Notice**” has the meaning given in Section 11.27(c) of this Project Agreement.
- 1.377 “**No Default Payment Compensation Amount**” means, with respect to an amount and a specified period of time, such amount multiplied by (i) such period of time in days divided by the actual number of days in the current year multiplied by (ii) the rate of interest per annum in effect on each such day quoted by [REDACTED] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.378 “**Nominated Signalling Subcontract**” means that executed Subcontract between Construction Contractor and the Nominated Signalling Subcontractor substantially in the form attached as Schedule 13 – Nominated Signalling Subcontract to the RFP.

- 1.379 “**Nominated Signalling Subcontract Cash Allowance Account**” means the account established by the City in accordance with Section 11.31 of the Project Agreement for reimbursement of the costs of the Nominated Signalling Subcontractor Works.
- 1.380 “**Nominated Signalling Subcontract Milestone**” means a “Payment Milestone” (as defined in the Nominated Signalling Subcontract) set out in Schedule B – Subcontract Price and Payment Milestones of the Nominated Signalling Subcontract.
- 1.381 “**Nominated Signalling Subcontractor**” means [REDACTED].
- 1.382 “**Nominated Signalling Subcontractor Works**” means the scope of works to be undertaken by the Nominated Signalling Subcontractor in accordance with the Nominated Signalling Subcontract.
- 1.383 “**Nominated Signalling Contractor Works Cash Allowance**” has the meaning given in Section 11.31(c) of the Project Agreement.
- 1.384 “**Nominated Signalling Subcontractor Works Gainshare**” means the amount of \$[REDACTED].
- 1.385 “**Non-Conformance**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.386 “**Non-Conformance Tracking System**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.387 “**Non-Debt Compensation Amount**” has the meaning given in Section 33.6(b)(i)(A) of the Project Agreement.
- 1.388 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.389 “**Non-Disclosure Agreement**” has the meaning given in Section 6.3(f) of Schedule 27 – Dispute Resolution Procedure.
- 1.390 “**Non-Renewed Warranty Letter of Credit**” has the meaning given in Section 11.18(i) of the Project Agreement.
- 1.391 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.392 “**Notice**” has the meaning given in Section 51.1(a) of the Project Agreement.
- 1.393 “**Notice of Delegation**” has the meaning given in Section 25.16(b) of the Project Agreement.
- 1.394 “**Notice of Dispute**” has the meaning given in Section 1.3 of Schedule 27 – Dispute Resolution Procedure.
- 1.395 “**Notice of Project**” means a notice of project filed with the Ministry of Labour in compliance with O. Reg 213/91 under the *Occupational Health and Safety Act* (Ontario).

- 1.396 “**Occupational Health and Safety Act (Ontario)**” means the *Occupational Health and Safety Act*, R.S.O. 1990, C. o.1, as amended from time to time.
- 1.397 “**OHSAS 18001**” means the international standard for occupational health and safety management systems developed by the Occupational Health and Safety Advisory Services Project Group, a British body formed to develop the standard.
- 1.398 “**OHSAS 18001 Accreditation**” means, in respect of a person, such person having received certification in respect of its health and safety management systems that such systems comply with the requirements of OHSAS 18001.
- 1.399 “**Ontario Heritage Act (Ontario)**” means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended from time to time.
- 1.400 “**Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011**” means the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Sch. 32, as amended from time to time.
- 1.401 “**Order**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.402 “**Other Contractor**” means an Additional Contractor or a Third Party Contractor.
- 1.403 “**Other Works**” means the Additional Works and the Third Party Works.
- 1.404 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.405 “**Overhead Contact System**” sometimes referred to as “Overhead Catenary System” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.406 “**Ownership**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.407 “**PAR Meeting**” has the meaning given in Section 14.6(f) of the Project Agreement.
- 1.408 “**PAR Meeting Expiry Date**” has the meaning given in Section 14.6(g) of the Project Agreement.
- 1.409 “**Party**” means either the City or DB Co, and “**Parties**” means collectively the City and DB Co.
- 1.410 “**Party Representative**” has the meaning given in Section 2.1 of Schedule 27 – Dispute Resolution Procedure.
- 1.411 “**Patents**” includes all national (including the United States and Canada), regional and multinational statutory invention registrations, patents, patent registrations, patent applications, provisional patent applications, industrial designs, industrial models, including all reissues, divisions, continuations, continuations-in-part, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application.
- 1.412 “**Pavement Design Report**” means a report prepared for the purpose of providing recommendations for removal, resurfacing, and/or reconstruction of existing or new pavement structure based on collected pavement and subsurface data.

- 1.413 **“Payment Certifier”** means the professional architect of record or the engineer of record for the Project.
- 1.414 **“Payment Compensation Amount”** means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such day equal to [REDACTED]% over the rate of interest per annum quoted by [REDACTED] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.415 **“Payment Period”** has the meaning given in Schedule 21 – Construction Period Payments.
- 1.416 **“PBS”** has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.417 **“PBS Update”** has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.418 **“PBS Submittal”** has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.419 **“Peak Period”** means:
- (a) between the hours of 06:30 and 9:00 on each weekday which is not a statutory holiday in the Province of Ontario; and
 - (b) between the hours of 14:45 and 18:00 on each weekday which is not a statutory holiday in the Province of Ontario.
- 1.420 **“Performance Guarantee of Construction Guarantor”** means each performance guarantee given by the Construction Guarantors in the form set out in Schedule 29 – Form of Performance Guarantee of Construction Guarantor.
- 1.421 **“Performance Standards Regulation”** means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.422 **“Permits, Licences, Approvals and Agreements”** means the City Permits, Licences, Approvals and Agreements and the DB Co Permits, Licences, Approvals and Agreements, and **“Permits, Licences, Approvals or Agreements”** means any of the foregoing.
- 1.423 **“Permitted Borrowing”** means:
- (a) any advance to DB Co under the Lending Agreements;
 - (b) any additional financing approved by the City in accordance with Section 1.9 of Schedule 22 - Variation Procedure to the Project Agreement; and
 - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-in Period that does not increase the City’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.424 **“Personal Information”** means all personal information (as the term “personal information” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the

- custody or control of DB Co or any DB Co Party other than personal information of the employees of DB Co or the DB Co Parties and other than personal information that is wholly unrelated to the Works and not derived directly or indirectly from the City in respect of the Project.
- 1.425 “**Personal Information Protection and Electronic Documents Act (Canada)**” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended from time to time.
- 1.426 “**Planned Value**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.427 “**Police Service**” means the Royal Canadian Mounted Police, the Ontario Provincial Police, the Ottawa Police Service and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.428 “**Post-Installation Checkout**” or “**PICO**” has the meaning given in Schedule 14 – Testing & Commissioning.
- 1.429 “**Pre-Final Design Development**” or “**PFDD**” has the meaning given in Schedule 10 – Review Procedure.
- 1.430 “**Prequalification Submission**” means DB Co’s response to the request for qualifications issued in respect of the Project on September 13, 2016.
- 1.431 “**Prequalified Subcontractor**” means any Subcontractor that was identified in the list of subcontractors submitted as part of DB Co’s Prequalification Submission, as amended pursuant to the process set out in the Request for Proposals.
- 1.432 “**Proceeding At Risk**” has the meaning given in Section 14.6(g) of the Project Agreement.
- 1.433 “**Proceeding At Risk Matter**” has the meaning given in Section 14.6(a) of the Project Agreement.
- 1.434 “**Proceeding At Risk Notice**” has the meaning given in Section 14.6(a) of the Project Agreement.
- 1.435 “**Proceedings Against the Crown Act (Ontario)**” means the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, as amended from time to time.
- 1.436 “**Procurement Monitoring and Implementation Plan**” has the meaning given in Section 11.24(a) of the Project Agreement.
- 1.437 “**Product**” means or “**Products**” mean material, machinery, equipment and fixtures forming the Works but does not include equipment or machinery used to prepare, fabricate, convey or erect the Works, which is referred to as construction machinery and equipment.
- 1.438 “**Professional Engineer**” means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.
- 1.439 “**Prohibited Act**” has the meaning given in Section 50.1(a) of the Project Agreement.

- 1.440 “**Project**” has the meaning given in the recitals to the Project Agreement.
- 1.441 “**Project Agreement**” has the meaning given in the recitals to the Project Agreement.
- 1.442 “**Project Agreement Arbitration**” has the meaning given in Section 11.1 of Schedule 27 – Dispute Resolution Procedure.
- 1.443 “**Project Co**” has the same meaning as “RTG”.
- 1.444 “**Project Co Party**” has the same meaning as “RTG Party”; and “**Project Co Parties**” has the same meaning as “RTG Parties”.
- 1.445 “**Project Data**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.446 “**Project Debt Interest Cost**” means the budgeted amount of aggregate interest charges in respect of the Debt Amount used to calculate the Cost of the Financing portion of the Guaranteed Price.
- 1.447 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.448 “**Project Know-How**” means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through DB Co or any DB Co Party and revealed to or discovered by the City, whether before or after Commercial Close, which may be connected in any way to:
- (a) the Works, including the design and construction of the New City Infrastructure and the New MTO Infrastructure; or
 - (b) the Project Agreement.
- 1.449 “**Project Operations**” means the performance of the Works and the performance of all other obligations of DB Co under the Project Agreement.
- 1.450 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the earlier of the Termination Date or latest Final Completion Date.
- 1.451 “**Project Zone of Influence**” has the meaning described in Part 3-7 (Instrumentation and Monitoring) of Schedule 15 – Output Specification.
- 1.452 “**Proprietor**” has the meaning given in Section 42.6(a) of the Project Agreement.
- 1.453 “**Protesters**” has the meaning given in Section 11.13(a) of the Project Agreement.
- 1.454 “**Province**” means Her Majesty the Queen in right of Ontario.
- 1.455 “**PS Services**” means those procurement support services performed by RTG in accordance with the PS Services Variation in respect of the scope, planning and administration of the City’s procurement of the Works pursuant to this Project Agreement.
- 1.456 “**PS Services Variation**” means that contract variation effective April 19, 2017, under the Stage 1 Project Agreement, governing performance of the PS Services under such project agreement.

- 1.457 “**Rail Transit Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the design or construction of rail transit systems.
- 1.458 “**Railway Approvals**” means all consents, approvals, permissions and agreements, and amendments thereto, required to be obtained from a Railway Company pursuant to a Railway Order or Applicable Laws, for the carrying out of Works on land or improvements of a Railway Company, but does not include any Railway Orders.
- 1.459 “**Railway Company**” means CN, VIA Rail and any other railway company that owns or operates a rail service, any part of which is on any part of the Lands during the Project Term and “**Railway Companies**” means all of them.
- 1.460 “**Railway Order**” means any order of the Canadian Transportation Agency:
- (a) granted in favour of the City allowing or providing for:
 - (i) infrastructure comprising or to comprise New City Infrastructure or New MTO Infrastructure to be located upon and across land or improvements of a Railway Company; and
 - (ii) the construction, maintenance and use of such infrastructure upon and across such land or improvements; or
 - (b) for the carrying out of any Works on land or improvements of a Railway Company, and all amendments thereto.
- 1.461 “**Record Drawings**” means signed and sealed drawings prepared by the Professional Engineer or Architect, using As Built Drawings, after verifying the process in which the actual conditions of the completed project or applicable components as they are constructed, including any changes that were initiated due to site conditions or other causes and where all such changes are clearly identified through redlines in the As Built Drawings or by means of any other format agreed by the City.
- 1.462 “**Recoverable Tax**” has the meaning given in Section 4.13(c) of the Project Agreement.
- 1.463 “**Recovery Amount**” has the meaning given in Section 46.3(g) of the Project Agreement.
- 1.464 “**Recovery Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.465 “**Recovery Schedule Report**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.466 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.467 “**Reference Documents**” means those documents identified as such in Article 3 of Schedule 15-1.
- 1.468 “**Reimbursement Event**” has the meaning given in Section 27.5(a) of the Project Agreement.
- 1.469 “**Reinstatement Plan**” has the meaning given in Section 11.9(f) of the Project Agreement.

- 1.470 “**Reinstatement Work**” has the meaning given in Section 11.9(b) of the Project Agreement.
- 1.471 “**Release**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.472 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Rail Transit Specific Change in Law.
- 1.473 “**Relevant Conviction**” means a charge or conviction, at any time within the previous 6 years, of any offense: (i) of moral turpitude in Canada or elsewhere; (ii) for which records exist under the *Criminal Records Act*; or (iii) otherwise designated as a Relevant Conviction by the City from time to time, and that conviction remains in effect at that time and is one for which a pardon has not been granted.
- 1.474 “**Relief Event**” has the meaning given in Section 34.1(a) of the Project Agreement.
- 1.475 “**Remaining Systems Integration Works**” means those Systems Integration Works to be performed by City Parties in respect of integration of the Confederation Line East Extension and Confederation Line West Extension with the Existing Confederation Line, as described in Schedule 14 – Testing & Commissioning.
- 1.476 “**Remaining Works**” means those Works described in Article 18 of Part 1 of Schedule 15-2.
- 1.477 “**Remaining Works Cash Amount**” has the meaning given in Section 4.2(g) of the Project Agreement.
- 1.478 “**Remaining Works DB Co Commissioning**” means the DB Co Commissioning in respect of the Remaining Works.
- 1.479 “**Remaining Works Letter of Credit**” has the meaning given in Section 11.18A(a) of the Project Agreement.
- 1.480 “**Remaining Works Minor Deficiencies**” means any defect, deficiencies and items of outstanding work arising from or related to the Remaining Works, including any Minor Deficiencies.
- 1.481 “**Remaining Works Minor Deficiency Inspection Request**” has the meaning given in Section 25.12A(a) of the Project Agreement.
- 1.482 “**Remaining Works Minor Deficiencies List**” has the meaning given in Section 25.12A(a) of the Project Agreement.
- 1.483 “**Remaining Works Testing & Commissioning Plan**” means the Testing & Commissioning Plan for the Remaining Works included in the Testing & Commissioning Program.
- 1.484 “**Remaining Works Warranty Letter of Credit**” has the meaning given in Section 11.18B(a) of the Project Agreement.
- 1.485 “**Remaining Works Warranty Period**” means a period beginning on the West Final Completion Date and expiring on the date 2 years after such West Final Completion Date.

- 1.486 “**Remaining Works Warranty Works**” has the meaning given in Section 11.17(a)(iii) of the Project Agreement.
- 1.487 “**Request for Art Payment**” has the meaning given in Section 11.30(g) of the Project Agreement.
- 1.488 “**Request for Nominated Signalling Contractor Works Payment**” has the meaning given in Section 11.31(f) of the Project Agreement.
- 1.489 “**Request for Utility Works Payment**” has the meaning given in Section 11.29(h) of the Project Agreement.
- 1.490 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on June 26, 2017, as amended from time to time.
- 1.491 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (d) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder;
 - (e) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (f) is subject to a material claim of the City under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and

which (in respect of any such pending claim, if it were to be successful) would, in the City's view, in either case, be reasonably likely materially to affect the ability of DB Co to perform its obligations under the Project Agreement; or

- (g) has a material interest in the production of tobacco products.
- 1.492 **“Revenue Service Vehicle Kilometres”** means the total distance travelled by Vehicles in revenue service during a specified period, measured in Kilometres and reported to the City by RTG in RTG's monthly performance monitoring reports under the Stage 1 Project Agreement.
- 1.493 **“Review Procedure”** means the procedure set out in Schedule 10 - Review Procedure.
- 1.494 **“Review Procedure Activities”** means:
- (a) performance of the requirements of Schedule 10 – Review Procedure for all Works Submittals required to be delivered prior to Substantial Completion, including:
 - (i) all Submittals by DB Co;
 - (ii) City review periods and responses regarding Works Submittals;
 - (iii) amendment by DB Co, if required; and
 - (iv) re-submission by DB Co, if required;
 - (b) any other submission activities required by DB Co pursuant to the Project Agreement
- 1.495 **“Review Procedure Activities Register”** means a register of Review Procedure Activities which shall include the submission dates and review periods for all Works Submittals required under Schedule 10 – Review Procedure, Schedule 12 – Work Scheduling Requirements, and elsewhere in the Project Agreement.
- 1.496 **“RFP Financial Submission Deadline”** means October 22, 2018.
- 1.497 **“RFP Technical Submission Deadline”** means September 28, 2018.
- 1.498 **“Road Cut Permit”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.499 **“Road Safety Audit Certificate”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.500 **“Road Section”** has the meaning given in Part B of Schedule 34 – Mobility Matters.
- 1.501 **“Roadway”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.502 **“Roadway Works”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.503 **“Roll Plans”** means the following documents included in the Background Information:

- (a) [REDACTED]; and
 - (b) [REDACTED].
- 1.504 “RTG” means Rideau Transit Group General Partnership, a general partnership established under the laws of Ontario [REDACTED] and each of their permitted successors and assigns.
- 1.505 “RTG City Party Works” the RTG Systems Integration Works and the RTG Interface and Design Management Works.
- 1.506 “RTG Interface and Design Management Works” means the work and activities performed, or required to be performed by RTG or any RTG Party to assist with the design review, quality control management and testing and commissioning oversight, from a System Infrastructure maintenance and life cycle perspective pursuant to that contract variation effective April 24, 2019, under the Stage 1 Project Agreement, governing performance of such work and activities but excluding for clarity any RTG System Integration Work.
- 1.507 “RTG Party” means:
- (a) [REDACTED] (collectively the “RTG CC”)
 - (b) [REDACTED] (collectively the “RTG MC”);
 - (c) any person engaged by RTG, RTG CC or RTG MC from time to time as may be to procure or manage the provision of the scope of work under the project agreement dated February 12, 2013 between the City and RTG, as permitted by such project agreement; and
 - (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “RTG Parties” shall be construed accordingly
- 1.508 “RTG Stage 1 PA Works” means any work and activities performed, or required to be performed by RTG or any RTG Party pursuant to the Stage 1 Project Agreement, and the contract variations executed thereunder, but excluding the RTG City Party Works.
- 1.509 “RTG Systems Integration Works” means those Remaining Systems Integration Works performed, or required to be performed by RTG or any RTG Party in respect of integration of the Confederation Line East Extension and Confederation Line West Extension with the Existing Confederation Line, as described in Schedule 14 – Testing & Commissioning.
- 1.510 “RTG Works” means the RTG Stage 1 PA Works and RTG City Party Works.
- 1.511 “S&TCS” means signalling and train control system.
- 1.512 “Safety” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.513 “Schedule” means a schedule to the Project Agreement.
- 1.514 “Scheduled Final Completion Date” means either the East Scheduled Final Completion Date or West Scheduled Final Completion Date, as applicable.

- 1.515 “**Scheduled Revenue Service Vehicle Kilometres**” means the total revenue service vehicle kilometres required in a specified period by the City through the booking process set out in Article 3.3 of Appendix A to Schedule 15-3 of the Stage 1 Project Agreement, measured in kilometres and reported by RTG in RTG’s monthly performance monitoring reports under the Stage 1 Project Agreement.
- 1.516 “**Scheduled Substantial Completion Date**” means either the East Scheduled Substantial Completion Date or West Scheduled Substantial Completion Date, as applicable.
- 1.517 “**Security**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.518 “**Security Documents**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.519 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of DB Co or any DB Co Party, give that competitor a competitive advantage over DB Co or such DB Co Party and thereby prejudice the business of DB Co or such DB Co Party.
- 1.520 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affects access by DB Co to such markets.
- 1.521 “**Shop Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by DB Co to illustrate details of a portion of the Works, indicating materials, methods of construction and attachment or anchorage, erection diagrams, connections, explanatory notes and other information necessary for completion of the Works.
- 1.522 “**Site**” means, at any time and from time to time, that portion of the Lands:
- (a) on which DB Co or any DB Co Party is engaged in any Construction Activities or Demolition activities or is otherwise engaged in completing the Works;
 - (b) on which any of the Works have been commenced but not completed in their entirety;
 - (c) that are hoarded, cordoned, or otherwise fenced off by DB Co, and any Lands immediately surrounding such hoarding, cordons or fencing; or
 - (d) within the active construction footprint of the Works.
- 1.523 “**Site Acceptance Test**” or “**SAT**” has the meaning given in Schedule 14 – Testing & Commissioning.
- 1.524 “**Site Conditions**” means the condition of the Lands; including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.525 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by the City to be performed having an individual cost or aggregate cost with other

- linked works, including facilities and equipment, of a minor nature, not exceeding \$[REDACTED] (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of a Construction Period Quality Failure, or will increase the cost to DB Co of carrying out the Works.
- 1.526 “**Special Utility Debt Compensation Amount**” has the meaning given in Section 33.6(b)(i)(A) of the Project Agreement.
- 1.527 “**Species-at-Risk**” means any member of a species, subspecies, variety or genetically or geographically distinct population of animal, plant or other organism that is listed in the Species at Risk in Ontario List maintained pursuant to the ESA and any analogous federal list under the *Species at Risk Act* (Canada), and any other species that has been classified as being threatened or endangered under Applicable Law.
- 1.528 “**Stage 1 Connection Infrastructure**” means that portion of the Existing Confederation Line, to which the System Infrastructure is be directly connected, including in respect of the East Works, rail, drainage, OCS, traction power, CTS and train control at the Existing Confederation Line’s termination point at Blair station and, in respect of the West Works, rail, drainage, OCS, traction power, CTS and train control at the Existing Confederation Line’s termination point at Tunney’s Pasture.
- 1.529 “**Stage 1 Connection Infrastructure Final Report**” means a report to be issued to DB Co following RTG’s completion of construction and commissioning of such Stage 1 Connection Infrastructure, describing the specifications and actual as-built condition of the Stage 1 Connection Infrastructure.
- 1.530 “**Stage 1 Connection Infrastructure Preliminary Report**” means the documentation provided to DB Co in the folder titled “Stage 1 Connection Infrastructure Preliminary Report” in the electronic data room established in accordance with the RFP, describing the specifications for, and anticipated as-built condition of, the Stage 1 Connection Infrastructure.
- 1.531 “**Stage 1 Project Agreement**” means that project agreement between the City and RTG dated February 12, 2013, as varied and amended from time to time.
- 1.532 “**Stage 1 Systems Information**” means the documentation provided to DB Co in the folder titled “Stage 1 Systems Integration” in the electronic data room established in accordance with the RFP.
- 1.533 “**Stakeholders**” means individuals and organizations with an interest in the Project, including those listed in Schedule 15 - Output Specifications, but excluding the City.
- 1.534 “**Stakeholder Agreement**” has the meaning given in Section 10.3(f) of the Project Agreement.
- 1.535 “**Standards & Guidelines for Conservation of Provincial Heritage Properties**” means the Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the *Ontario Heritage Act* (Ontario) on April 28, 2010, as amended from time to time.
- 1.536 “**Standby Letter of Credit**” means a letter of credit attached as Schedule 7A – Standby Letter(s) of Credit, and “**Standby Letter(s) of Credit** or **Standby Letters of Credit**” means all letters of credit attached as Schedule 7A – Standby Letter(s) of Credit.

- 1.537 “**Start-Up Meeting**” has the meaning given in Section 11.2(a) of the Project Agreement.
- 1.538 “**Station**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents
- 1.539 “**Step-in Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.540 “**Stormwater management**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.541 “**Structure**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.542 “**Subcontract**” or “**Subcontracts**” means the contracts entered into by or between DB Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor, and any other Subcontractor at any tier in relation to any aspect of the Works.
- 1.543 “**Subcontractor**” means any subcontractor of DB Co engaged by or through DB Co to perform any of the Works, including the Construction Contractor, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.544 “**Subcontractor’s Direct Agreement**” means the agreement to be entered into among the City, DB Co, the Construction Contractor and certain Subcontractors determined in accordance with the terms of the Project Agreement in the form set out in Schedule 3 – Subcontractor’s Direct Agreement.
- 1.545 “**Submittal(s)**” means a Works Submittal.
- 1.546 “**Subsequent Notice**” means any East Subsequent Notice or West Subsequent Notice.
- 1.547 “**Substantial Completion**” means either East Substantial Completion or West Substantial Completion, as applicable.
- 1.548 “**Substantial Completion Certificate**” means either the East Substantial Completion Certificate or West Substantial Completion Certificate, as applicable.
- 1.549 “**Substantial Completion Date**” means either the East Substantial Completion Date or West Substantial Completion Date, as applicable.
- 1.550 “**Substantial Completion Notice**” has the meaning given in Section 25.4(b) of the Project Agreement.
- 1.551 “**Substantial Completion Payment**” means either the East Substantial Completion Payment or West Substantial Completion Payment, as applicable.
- 1.552 “**Substantial Completion Payment Date**” means either the East Substantial Completion Payment Date or West Substantial Completion Payment Date, as applicable.
- 1.553 “**Subsurface Utility Engineering (SUE) Reports**” means:
- (a) [REDACTED]; and
 - (b) [REDACTED].

- 1.554 “**Supplier**” means a person who supplies to DB Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Works.
- 1.555 “**Systems**” has the meaning given in Schedule 15-1.
- 1.556 “**System Extension**” has the meaning given in Schedule 37 – Extension and Additional Phases.
- 1.557 “**System Infrastructure**” means the new, modified or improved infrastructure described as such in Schedule 15 – Output Specifications, including as generally described in Section 2.2 of Part 1 of Schedule 15-2, and all associated data, records, drawings, plans, reports and systems related thereto, all as described in the Project Agreement.
- 1.558 “**Systems Integration Dispute**” has the meaning given in Section 1.1(n) of Schedule 14 – Testing & Commissioning.
- 1.559 “**Systems Integration Management Plan**” or “**SIMP**” has the meaning given in Schedule 15-2, Part 1, Article 11 – Systems Integration Program.
- 1.560 “**Systems Integration Test**” or “**SIT**” has the meaning given in Schedule 14 – Testing & Commissioning.
- 1.561 “**Systems Integration Verifier**” has the meaning given in Section 1.1(n) of Schedule 14 – Testing & Commissioning.
- 1.562 “**Systems Integration Works**” means the overall sequential integration of each of the Confederation Line East Extension and the Confederation Line West Extension with the Existing Confederation Line and the integration of each with the Existing Confederation Line system such that the Confederation Line East Extension, Confederation Line West Extension and the Existing Confederation Line function together as one coherent working rail transit system as envisaged by Schedule 15 – 2 Part 1 and Schedule 15 – 2 Part 3 and Schedule 14 – Testing & Commissioning.
- 1.563 “**System Integrator**” means the role performed by DB Co in relation to Systems Integration as described in Schedule 14 – Testing & Commissioning.
- 1.564 “**System User**” means any member of the public, any City Party and any other person that is on or about the New City Infrastructure or is otherwise making use of the New City Infrastructure for any purpose, including customers, employees, consultants or contractors of the City.
- 1.565 “**Tax**” or “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “**Taxes**” shall not include the City Taxes.
- 1.566 “**Technical Information**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.567 “**Technical Reports**” means the Environmental Reports, the Geotechnical Reports, the Archaeological Reports, and the Cultural Heritage Reports.
- 1.568 “**Termination Date**” means the earlier of the Expiry Date and such other date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.

- 1.569 “**Testing & Commissioning Coordinator**” has the meaning given in Section 1.2 of Schedule 14 – Testing & Commissioning.
- 1.570 “**Testing & Commissioning Plan**” means the testing and commissioning plan developed by DB Co in accordance with Schedule 14 – Testing & Commissioning for any of the East Works, West Works, Highway Works or Remaining Works, comprising part of the Testing & Commissioning Program.
- 1.571 “**Testing & Commissioning Program**” means the program, comprised of DB Co’s Testing & Commissioning Plans for each of the East Works, West Works, Highway Works or Remaining Works, submitted by DB Co in accordance with Schedule 14 – Testing and Commissioning and the Review Procedure, and assigned either “NO COMMENT” or “MINOR COMMENT”.
- 1.572 “**Testing & Commissioning Schedule**” has the meaning given in Section 8 of Schedule 12 – Works Scheduling Requirements.
- 1.573 “**Testing & Commissioning Team**” has the meaning given in Section 1.4 of Schedule 14 – Testing & Commissioning.
- 1.574 “**Third Party Arbitration**” has the meaning given in Section 11.1 of Schedule 27 – Dispute Resolution Procedure.
- 1.575 “**Third Party Contractors**” means any person (not being, for the avoidance of doubt, DB Co or any DB Co Party, Additional Contractors, RTG or any RTG Party) that carries out any Third Party Works.
- 1.576 “**Third Party Facilities**” means telephone facilities, infrastructure and other property of Utility Companies and Railway Companies and other public facilities and associated equipment, plant, materials and apparatus installed and operated or to be installed and operated on the Lands by any transit authority, communications provider, Utility Company, Railway Company or other third party (not including, for the avoidance of doubt, DB Co or any DB Co Party).
- 1.577 “**Third Party Lands**” means the Highway Corridor Lands.
- 1.578 “**Third Party Litigation**” has the meaning given in Section 11.2 of Schedule 27 – Dispute Resolution Procedure.
- 1.579 “**Third Party Works**” means any work performed by a Third Party Contractor on the Lands, including works in relation to,
- (a) an Encumbrance;
 - (b) Existing Infrastructure (other than Existing Infrastructure owned by the City or MTO);
 - (c) Third Party Facilities; and
 - (d) Utility Work and work pursuant to a Utility Agreement, Railway Order or an encroachment permit or other permitting authority of any Governmental Authority under Applicable Law.
- 1.580 “**TOCC**” means transit operations control centre.

- 1.581 **“Total Capital Cost Incurred to Date”** has the meaning given in Schedule 21 – Construction Period Payments.
- 1.582 **“Track”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.583 **“Traction Power”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.584 **“Traction Power Load Flow Study”** means a study that determines the number, locations and ratings of the traction power (TP) substations needed to support train operations. Determines the configuration and conductor sizes of the along-track dc distribution system. Sizes the major traction power equipment, such as substations’ dc circuit breakers and dc feeders.
- 1.585 **“Trade-Marks”** means all trademarks, service marks, trade dress, logos, distinguishing guises and indicia, trade names, corporate names, business names, domain names, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including, but not limited to, all marks registered in the Canadian Intellectual Property Office and the trademark offices of other nations throughout the world, and all rights therein provided by multinational treaties or conventions.
- 1.586 **“Traffic and Transit Management Plan”** or **“TTMP”** has the meaning given in Schedule 15-1.
- 1.587 **“Transitway”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.588 **“Transit System”** means any operating transit system that DB Co may encounter during the performance of its obligations under this Project Agreement.
- 1.589 **“Tree Compensation Plan”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.590 **“Tree Mitigation Plan”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.591 **“Trespassers”** has the meaning given in Section 11.13(a) of the Project Agreement.
- 1.592 **“Trial Running”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.593 **“Tunnel”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents
- 1.594 **“Underground Structures”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.595 **“Universal Design”** has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
- 1.596 **“Unpaid Construction Period Payment”** has the meaning given in Schedule 21 – Construction Period Payments.

- 1.597 “**Utilities**” means energy/power supplies, communications, data transmission and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.598 “**Utility Baseline Report**” means the utility baseline report included herein as Schedule 38 – Utility Baseline Report, as may be amended in accordance with its terms.
- 1.599 “**Utility Agreement**” means any agreement entered into by DB Co with a Utility Company in connection with the design removal, construction, installation, repair, preservation, relocation or maintenance of Utility Infrastructure in, on, under, over or adjacent to the Lands, and includes any site or other permits issued thereunder or pursuant thereto, all as amended, supplemented or replaced from time to time.
- 1.600 “**Utility Company**” means the owner or operator of any Utility Infrastructure or any company or companies designated by DB Co to provide Utilities.
- 1.601 “**Utility Company Self-Performed Works**” means the temporary and permanent installation, protection, removal, relocation, upgrading, reinstatement, restoration, downsizing, designing, and/or building works relating to Utility Infrastructure carried out by a Utility Company under a Utility Agreement in connection with or as part of the Project Operations, and identified as being subject to a Cash Allowance in Article 8 of Part 2 of Schedule 15-2 of the Output Specifications.
- 1.602 “**Utility Company Works Cash Allowance**” has the meaning given in Section 11.29(f) of the Project Agreement.
- 1.603 “**Utility Infrastructure**” means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, lighting, data, communications, gas, oil and petroleum products, water, storm water or sewage, wireless, or other similar commodity or substance which serve the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, and all related infrastructure.
- 1.604 “**Utility Works**” means the DB Co Utility Works and the Utility Company Self-Performed Works.
- 1.605 “**Utility Works Cost**” means the actual cost of performing the Utility Company Self Performed Works.
- 1.606 “**Utility Works Fee**” has the meaning given in Section 11.29(g) of the Project Agreement.
- 1.607 “**Variation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.608 “**Variation Confirmation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.609 “**Variation Directive**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.610 “**Variation Enquiry**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.611 “**Variation Procedure**” means the procedure set out in Schedule 22 - Variation Procedure.
- 1.612 “**Vehicles**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.

- 1.613 “**VIA**” means Via Rail Canada and its successors.
- 1.614 “**Warranty Cash Amount**” means either the East Warranty Cash Amount or West Warranty Cash Amount.
- 1.615 “**Warranty Letter of Credit**” has the meaning given in Section 11.18(a) of the Project Agreement.
- 1.616 “**Warranty Period**” means each of the East Warranty Period, West Warranty Period and Remaining Works Warranty Period, as applicable.
- 1.617 “**Warranty Protocol**” has the meaning given in Schedule 36 – Interface Agreement.
- 1.618 “**Warranty Request**” has the meaning given in Schedule 36 – Interface Agreement.
- 1.619 “**Warranty Work**” means all work, including any work to correct Construction Defects and Construction Latent Defects to satisfy the warranties provided pursuant to Section 11.16, and in accordance with the applicable Warranty Period. For clarity, this shall include all work required to Make Good any damage to other works caused by the repairing of such defects, deficiencies or failures to comply to the Project Agreement.
- 1.620 “**Weekday**” means Monday, Tuesday, Wednesday, Thursday, or Friday.
- 1.621 “**West Anticipated Final Completion Date**” means the date (which, for greater certainty, will be on or before the West Scheduled Final Completion Date) on which DB Co anticipates that West Final Completion will be achieved.
- 1.622 “**West Anticipated Substantial Completion Date**” has the meaning given in Section 25.5(a)(ii) of the Project Agreement.
- 1.623 “**West Completion Holdback**” has the meaning given in Section 25.10(b) of the Project Agreement.
- 1.624 “**West Construction Defect**” has the meaning given in Section 11.15(b) of the Project Agreement.
- 1.625 “**West DB Co Commissioning**” means the DB Co Commissioning in respect of the West Works other than the Highway Works.
- 1.626 “**West Final Completion**” means the completion of the West Works in accordance with the Project Agreement, including completion of all West Minor Deficiencies, Remaining Works, Remaining Works Minor Deficiencies.
- 1.627 “**West Final Completion Countdown Notice**” has the meaning given in Section 25.13(a)(ii) of the Project Agreement.
- 1.628 “**West Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.14(g) of the Project Agreement in respect of West Final Completion.

- 1.629 “**West Final Completion Date**” means the date on which West Final Completion is achieved as evidenced by the West Final Completion Certificate, as such date shall be stated therein.
- 1.630 “**West Final Completion Notice**” has the meaning given in Section 25.14(c) of the Project Agreement.
- 1.631 “**West Further Revised Substantial Completion Date**” has the meaning given in Section 25.5(k) of the Project Agreement.
- 1.632 “**West Initial Countdown Notice**” has the meaning given in Section 25.5(a)(ii) of the Project Agreement.
- 1.633 “**West Minor Deficiencies**” has the meaning given in Section 25.10(b) of the Project Agreement.
- 1.634 “**West Minor Deficiencies List**” has the meaning given in Section 25.10(b) of the Project Agreement.
- 1.635 “**West Revised Substantial Completion Date**” has the meaning given in Section 25.5(h) of the Project Agreement
- 1.636 “**West Scheduled Substantial Completion Date**” means May 25, 2025, as such date may be amended pursuant to Section 32 of the Project Agreement.
- 1.637 “**West Scheduled Final Completion Date**” means the date that is two years following the West Substantial Completion Date.
- 1.638 “**West Subsequent Notice**” has the meaning given in Section 25.5(h) of the Project Agreement.
- 1.639 “**West Substantial Completion** ” means the point at which, in respect of the West Works, (i) the New City Infrastructure and New MTO Infrastructure comprising the West Works, other than the Remaining Works, have been completed in accordance with the Project Agreement; (ii) the Payment Certifier appointed pursuant to Section 17.3(g) of the Project Agreement has certified the substantial performance of the Design and Construction Contract and the related certificate of substantial performance has been published, each in accordance with the CA; and (iii) all requirements for West Substantial Completion described in the West Testing & Commissioning Plan and Highway Testing & Commissioning Plan, other than in respect of West Minor Deficiencies, the Remaining Works, the Remaining Works Minor Deficiencies and Trial Running have been satisfied in respect of the New City Infrastructure as a whole.
- 1.640 “**West Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.4(d) of the Project Agreement.
- 1.641 “**West Substantial Completion Date**” means the date on which West Substantial Completion is achieved as evidenced by the West Substantial Completion Certificate, as such date shall be stated therein.
- 1.642 “**West Substantial Completion Notice**” has the meaning given in Section 25.4(b)(ii) of the Project Agreement.
- 1.643 “**West Substantial Completion Payment**” means the amount of \$[REDACTED], less the West Completion Holdback as at the West Substantial Completion Payment Date.

- 1.644 “**West Substantial Completion Payment Date**” means the date that is 2 Business Days after the West Substantial Completion Date.
- 1.645 “**West Testing & Commissioning Plan**” means the Testing & Commissioning Plan for the West Works (other than Highway Works) included in the Testing & Commissioning Program.
- 1.646 “**West Warranty Cash Amount**” has the meaning given in Section 4.2(c)(ii) of the Project Agreement.
- 1.647 “**West Warranty Letter of Credit**” has the meaning given in Section 11.18(a)(ii) of the Project Agreement.
- 1.648 “**West Warranty Period**” means:
- (a) in respect of the West Works other than in respect of New Municipal Infrastructure and New MTO Infrastructure, a period beginning on the West Substantial Completion Date and expiring on the date 2 years after such West Substantial Completion Date;
 - (b) in respect of each New Municipal Construction Component comprising part of the West Works, a period beginning on the New Municipal Infrastructure Component Acceptance Date for such New Municipal Construction Component, and expiring on the date 2 years after such New Municipal Infrastructure Component Acceptance Date; and
 - (c) in respect of New MTO Infrastructure, a period beginning on the applicable Handover for such New MTO Infrastructure, and expiring on the date 2 years after such Handover.
- 1.649 “**West Warranty Work**” has the meaning given in Section 11.17(a)(ii) of the Project Agreement.
- 1.650 “**West Works**” means the Works as it relates to the Confederation Line West Extension, as generally described in Article 19 of Part 1 of Schedule 15-2, and all Highway Works related thereto.
- 1.651 “**Witness Point**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.652 “**Works**” means the design, construction, installation, testing, commissioning and completion of the New City Infrastructure and the New MTO Infrastructure, and the rectification of any Minor Deficiencies, Remaining Works Minor Deficiencies, Warranty Work, all other work under the Permits, Licences, Approvals and Agreements, and all work which is implied by the Project Agreement and that is necessary for the stability or safe and proper design, construction, installation, testing, commissioning and completion of the New City Infrastructure and the New MTO Infrastructure, except for all work which is expressly described in this Project Agreement, including Schedule 35 – Permits, Licences, Approvals and Agreements, as being the responsibility of the City.
- 1.653 “**Works Area Micro-Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.654 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;

- (b) occurs after the date that is 30 days prior to the RFP Technical Submission Deadline;
 - (c) requires DB Co to perform any work of alteration, addition, Demolition, extension or variation in the quality or function of the New City Infrastructure or the New MTO Infrastructure which is similar in nature to the Works but is not Works or capital replacement work which DB Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
 - (d) was not reasonably foreseeable at the RFP Technical Submission Deadline by an experienced contractor carrying out activities and/or performing design and/or other operations similar to those to be carried out and/or performed by any DB Co Party in relation to the Project.
- 1.655 “**Works Committee**” has the meaning given in Section 14.1(a) of the Project Agreement.
- 1.656 “**Works Committee End Date**” has the meaning given in Section 14.3(a) of the Project Agreement.
- 1.657 “**Works Report**” means those updates and reports to be issued by DB Co in accordance with Schedule 33 – Works Reports.
- 1.658 “**Works Schedules**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.659 “**Works Submittals**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.660 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act*, 1997, S.O. ch.16, Sch. A (Ontario).
- 1.661 “**Zone of Influence**” has the meaning given in Schedule 15-1 - Technical Terms and Reference Documents.
2. **Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Articles, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section”, “Article” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Article, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.

- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 – Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to DB Co and shall be construed and interpreted as if the words “DB Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, 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.
- 2.10 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.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.

- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of any City Party shall be construed having regard to the interactive nature of the activities of the City Party and DB Co and further having regard to:
- (a) acts contemplated by the Output Specifications; or
 - (b) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of DB Co's and the City's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "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 the Project Agreement taken as a whole; and
 - (b) "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".
- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "such as" 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.
- 2.22 Where the Project 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.
- 2.23 Where the Project Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of days before a stipulated date or event or "by" a date which is a prescribed

- number of days before 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.
- 2.24 Where the Project 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.
- 2.25 Any reference to time of day or date means the local time or date in Ottawa, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day measured from midnight to midnight.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to DB Co or the City they shall be construed and interpreted as synonymous and to read “DB Co shall” or “the City shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by DB Co to the City shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the transit system and railway system construction industry will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:
- $$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_n}{\text{CPI}_0}$$
- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration DB Co’s and any DB Co Party’s experience and the investigations, inspections and examinations of the Background Information and in respect of the Lands, including the Existing Infrastructure and Stage 1 Connection Infrastructure, carried out by DB Co or by any DB Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

SCHEDULE 2

COMPLETION DOCUMENTS

In this Schedule 2, “certified” shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

1. DOCUMENTS TO BE DELIVERED BY DB CO

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than City, RTG and the Independent Certifier) and in form and substance satisfactory to City, acting reasonably, is to be delivered by DB Co to City on or prior to the Financial Close Target Date:

- 1.1 an original of this Project Agreement;
- 1.2 an original of the Lenders’ Direct Agreement;
- 1.3 an original of the Independent Certifier Agreement;
- 1.4 an original of the Insurance Trust Agreement;
- 1.5 an original notice of appointment of the DB Co Representative;
- 1.6 the Lending Agreements;
- 1.7 the Design and Construction Contract;
- 1.8 an original of the Performance Guarantee of Construction Guarantor;
- 1.9 an original of the Construction Contractor’s Direct Agreement;
- 1.10 an original of the Interface Agreement
- 1.11 those assignable subcontracts and Subcontractor’s Direct Agreements designated by City in accordance with the Project Agreement;
- 1.12 one printed copy of the Financial Model and two copies on universal serial bus (USB) flash drive;
- 1.13 the PBS-1, in form and substance satisfactory to City;
- 1.14 original Letter of Credit required in accordance with the Project Agreement or as the City may direct in accordance with the Insurance Trust Agreement;
- 1.15 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by the Construction Contractor in accordance with this Project Agreement;
- 1.16 [Intentionally Deleted];

- 1.17 a certificate of an officer of DB Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.18 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;
- 1.19 a certificate of an officer of the Construction Guarantor substantially in the form attached as Appendix B to this Schedule 2;
- 1.20 an original of the opinion from counsel to DB Co, the Construction Contractor, the Construction Guarantor, and such other DB Co Parties as City may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to City and its counsel;
- 1.21 [not used];
- 1.22 evidence that the COR-Certified Construction DB Co Party has its COR Certification in good standing (or to the extent that the COR-Qualified Construction DB Co Party does not have its COR Certification by Financial Close, evidence that the COR-Qualified Construction DB Co Party has its current OHSAS 18001 Accreditation in good standing and has made an application to IHSA for its COR Certification);
- 1.23 in respect of each partner of the Construction Contractor, a WSIB clearance certificate, or if a WSIB clearance certificate is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.24 in respect of each partner of the Construction Contractor, a CAD-7, or, if a CAD-7 is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.25 in respect of each partner of the Construction Contractor, a Workplace Injury Summary Report (WISR) or, if a WISR is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.26 the executed Nominated Signalling Subcontract; and
- 1.27 such other documents as the parties may agree, each acting reasonably.

2. DOCUMENTS TO BE DELIVERED BY CITY

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, where City is a party to such document, executed by City) is to be delivered by City to DB Co on or prior to the Financial Close Target Date:

- 2.1 an original of this Project Agreement;
- 2.2 an original of the Lenders' Direct Agreement;

- 2.3 an original of the Independent Certifier Agreement (executed by the City and the Independent Certifier);
- 2.4 an original of the Insurance Trust Agreement;
- 2.5 an original of the Subcontractor's Direct Agreements designated by City in accordance with the Project Agreement;
- 2.6 an original notice of appointment of the City Representative;
- 2.7 a certificate of an officer of City substantially in the form attached as Appendix D to this Schedule 2;
- 2.8 an original of the Interface Agreement (executed by the City and RTG);
- 2.9 an original of the Performance Guarantee of Construction Guarantor;
- 2.10 an original of the Construction Contractor's Direct Agreement;
- 2.11 any reliance letters addressed to the Lenders and DB Co in respect of the geotechnical data reports, etc.;
- 2.12 an original opinion from counsel to the City in respect of customary corporate and enforceability matters and otherwise acceptable to DB Co and its counsel, addressed to DB Co, the Construction Contractor, the Lenders' Agent and the Lender; and
- 2.13 such other documents as the parties may agree, each acting reasonably.

**APPENDIX A
[INTENTIONALLY DELETED]**

APPENDIX B
FORM OF DB CO/DB CO PARTY OFFICER'S CERTIFICATE

Certificate of an Officer of

[●]

(the “**Corporation**”)

TO: THE CITY OF OTTAWA

AND TO: NORTON ROSE FULBRIGHT CANADA LLP

AND TO: [_____]

I, [●], being the [●] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Constatting Documents

- (a) The Corporation is a subsisting corporation duly incorporated under the laws of [**the Province of Ontario**].
- (b) Attached hereto as **Schedule “A”** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the “Articles”). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
- (c) Attached hereto as **Schedule “B”** are true and complete copies of the by-laws of the Corporation (the “**By-laws**”) enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.
- (d) Attached hereto as **Schedule “C”** is a true and complete copy of a unanimous shareholders’ agreement between the shareholders of the Corporation and the Corporation (the “**Unanimous Shareholders’ Agreement**”) executed on or before the date hereof. The Unanimous Shareholders’ Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [●] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or

proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.

- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders' Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the [Business Corporations Act (Ontario) (the "Act")], the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders' Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders' Agreement or in any other agreement binding on the Corporation which:
 - (i) restrict or limit the powers of the Corporation to enter into:
 - (A) a certain project agreement with City made as of [●], 201[●] (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Project Agreement") pursuant to which the Corporation will design, build and finance the Confederation Line Extension Project;
 - (B) a lenders' direct agreement between the Corporation, City and the Lenders' Agent;
 - (C) a design and construction contract between the Corporation and [] (the "Construction Contractor");
 - (D) an insurance trust agreement between the Corporation, City, the Lenders' Agent and [REDACTED];

(E) [NTD: List other documents delivered at Financial Close.],
(collectively, the “Documents”); or

- (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule “D”** are true and complete copies of the resolutions of the [**directors/shareholders**] of the Corporation (the “**Resolutions**”), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, inter alia, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
- (i) the Articles, By-laws or the Unanimous Shareholders’ Agreement;
- (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or [**Ontario**] governmental body by which it is bound;
- (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
- (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.
- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or [Ontario] governmental authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

3. No Breach or Default

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will

contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under the Articles, By-laws, Unanimous Shareholders' Agreement or under any other agreement binding on the Corporation.

4. Specimen Signatures

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

NAME

POSITION

SIGNATURE

5. Capital

Listed below are all of the issued and outstanding shares in the capital of the Corporation and the registered owner of such shares:

ISSUED SHARES	REGISTERED OWNER

Attached hereto as **Schedule “E”** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation) securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this _____ day of _____, 201[●].

Name:

Title:

APPENDIX C
FORM OF DB CO/DB CO PARTY OPINION

[INSERT DATE]

The City of Ottawa

Norton Rose Fulbright Canada LLP

We have acted as counsel to [] (“**DB Co**”), [] (the “**Construction Contractor**”) and [•] (the “**Construction Guarantor**”) in connection with the alternative financing and procurement transaction whereby DB Co has agreed to enter into a design, build and finance agreement for the new Confederation Line Extension Project in Ottawa, Ontario. **[NTD: Additional parties to be added depending on consortium structure and/or the financing package.]**

This opinion is being delivered pursuant to Section 1 of Schedule 2 to the project agreement made as of [•], 201[•] between City and DB Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as counsel to DB Co, the Construction Contractor and the Construction Guarantor, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of [•], 201[•]):

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):
 - (a) the Design and Construction Contract;
 - (b) the Lenders’ Direct Agreement;
 - (c) the Construction Contractor’s Direct Agreement;
 - (d) the Subcontractor’s Direct Agreements designated by City in accordance with the Project Agreement;
 - (e) the Lending Agreements
 - (f) the Insurance Trust Agreement; and

(g) the Performance Guarantee of Construction Guarantor.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”. **[NTD: Additional documents to be added depending on consortium structure and/or the financing package.]**

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof.

We do not act as corporate counsel to **[DB Co, the Construction Contractor or the Construction Guarantor]**, nor have we participated in the general maintenance of their corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of each of DB Co, the Construction Contractor and the Construction Guarantor dated as of the date hereof (the “**Officer’s Certificates**”) as to certain factual matters.

Searches and Reliance

We have conducted, or have caused to be conducted, the searches identified in Schedule “A” (the “**Searches**”) for filings or registrations made in those offices of public record listed in Schedule “A”. The Searches were conducted against the current name and all former names of DB Co and the Construction Contractor (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule “A”.

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer’s Certificates.

We have relied exclusively, and without any independent investigation or enquiry, on the Officer’s Certificates and the certificates of public officials with respect to certain factual matters.

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the **[Ministry of Government Services (Ontario)]** of even date, copies of which are attached as Schedule “B”.

In connection with the opinions set forth in paragraphs **[5, 8, 11, 17 and 20]** below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of **[●]** dated **[●]**, 20**[●]** (the “**CC Opinion**”), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances. In connection with the opinions set forth in paragraphs 6, 9, 12, 15, 18 and 21 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of **[•]** dated **[•]**, 20**[•]** (the “**CG Opinion**”), a copy of which has been delivered to you. To the extent that the CG Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein,

the opinions herein expressed in reliance on the CG Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

Assumptions

For the purposes of the opinions expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than DB Co, the Construction Contractor and the Construction Guarantor) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than DB Co, the Construction Contractor and the Construction Guarantor) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.
4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than DB Co, the Construction Contractor and the Construction Guarantor) to DB Co, the Construction Contractor and the Construction Guarantor.

Opinions

Based upon and subject to the foregoing, and to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

Incorporation and Existence

1. DB Co is a corporation incorporated under the laws of [the Province of Ontario] and has not been dissolved.
2. The Construction Contractor is a corporation incorporated under the laws of [the Province of Ontario] and has not been dissolved.

3. The Construction Guarantor is a corporation incorporated under the laws of [the Province of Ontario] and has not been dissolved.

Corporate Power and Capacity

4. DB Co has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Project Agreement, and to enter into and perform its obligations under each of the Documents to which it is a party.
5. The Construction Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.
6. The Construction Guarantor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

Corporate Authorization

7. DB Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
8. The Construction Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
9. The Construction Guarantor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

Execution and Delivery

10. DB Co has duly executed and delivered each of the Documents to which it is a party.
11. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.
12. The Construction Guarantor has duly executed and delivered each of the Documents to which it is a party.

Enforceability

13. Each of the Documents to which DB Co is a party constitutes a legal, valid and binding obligation of DB Co, enforceable against it in accordance with its terms.

14. Each of the Documents to which the Construction Contractor is a party constitutes a legal, valid and binding obligation of the Construction Contractor, enforceable against it in accordance with its terms.
15. Each of the Documents to which the Construction Guarantor is a party constitutes a legal, valid and binding obligation of the Construction Guarantor, enforceable against it in accordance with its terms.

No Breach or Default

16. The execution and delivery by DB Co of the Documents to which it is a party does not, and the performance by DB Co of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which DB Co is subject.
17. The execution and delivery by the Construction Contractor of the Documents to which it is a party does not, and the performance by the Construction Contractor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Contractor is subject.
18. The execution and delivery by the Construction Guarantor of the Documents to which it is a party does not, and the performance by the Construction Guarantor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Guarantor is subject.

Regulatory Approvals

19. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by DB Co of the Documents to which it is a party and the performance of its obligations thereunder.
20. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction Contractor of the Documents to which it is a party and the performance of its obligations thereunder.
21. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction Guarantor of the Documents to which it is a party and the performance of its obligations thereunder.

Qualifications

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.
3. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
4. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
5. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
6. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of DB Co notwithstanding any agreement to the contrary.
8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
9. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.

11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.
12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
14. Any award of costs is in the discretion of a Court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on City for which it would be contrary to public policy to require DB Co to indemnify City or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

[INSERT NAME OF LAW FIRM]

Appendix D
FORM OF CERTIFICATE OF AN OFFICER OF
[City]
(the “Corporation”)

TO: [_____]

AND TO: [_____]

AND TO: [_____]

AND TO: [_____]

RE: Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [●] day of [●], 201[●] between **THE CITY OF OTTAWA** (“City”), and [_____] (“**DB Co**”)

I, [●], the [●] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Attached hereto as [●] is a true and complete copy of (i) the resolutions of the directors of the Corporation regarding the execution of public works projects assigned to the Corporation and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the Corporation relating to delegation of signing authority (collectively, the “[●]”), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
2. Attached hereto as **Schedule “B”** is a true and complete copy of the resolutions of the directors the Corporation approving the selection of DB Co as the designated proponent for the Confederation Line Phase 2 Project (the “**Project Resolutions**”). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
3. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver Contracts Documents (as such a term is defined in the Execution Resolutions referenced in Item 1(i) above) relating to the Project (as defined in the Project Agreement) on behalf of the Corporation.

The signatures set forth opposite their respective names are the true signatures of those persons.

Name	Position	Signature
[●]	_____	_____

[●]

[●]

[●]

DATED this _____ day of _____, 201[●].

Name:

Title:

**SCHEDULE 3-1
SUBCONTRACTOR’S DIRECT AGREEMENT**

THIS AGREEMENT is made as of the 24th day of April, 2019

BETWEEN:

THE CITY OF OTTAWA

(“City”)

– AND –

EAST WEST CONNECTORS GP, [REDACTED]

(“DB Co”)

– AND –

[REDACTED]

(the “Construction Contractor”)

– AND –

[REDACTED]

(the “Subcontractor”)

WHEREAS:

- A. City and DB Co have entered into the Project Agreement, which requires DB Co to enter into, and to cause the Construction Contractor and the Subcontractor to enter into, this Subcontractor’s Direct Agreement with City.
- B. DB Co and the Construction Contractor have entered into the Design and Construction Contract, which requires the Construction Contractor to enter into, and cause the Subcontractor to enter into, this Subcontractor’s Direct Agreement with City.

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

1. DEFINITIONS

In this Schedule 3 – Subcontractor’s Direct Agreement, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 3 – Subcontractor’s Direct Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “Default Notice” has the meaning given in Section 5(a).

- (b) “**Novation Notice**” has the meaning given in Section 6(b).
- (c) “**Party**” means City, DB Co, the Construction Contractor or the Subcontractor, and “**Parties**” means, collectively, City, DB Co, the Construction Contractor and the Subcontractor.
- (d) “**Subcontract**” means the design subcontract entered into by and between DB Co and the Subcontractor on December 12, 2018.
- (e) “**Substitute**” has the meaning given in Section 6(b).

2. INTERPRETATION

This Subcontractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Subcontractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Subcontractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Subcontractor’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Subcontractor’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, 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 Subcontractor’s Direct 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 Subcontractor’s Direct 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 Subcontractor’s Direct 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 Subcontractor’s Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Subcontractor’s Direct 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 Subcontractor’s Direct 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 Subcontractor’s Direct 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 Subcontractor’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Subcontractor’s Direct Agreement, the Construction Contractor’s Direct Agreement, the Project Agreement and the Design and Construction Contract, this Subcontractor’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Subcontractor’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

4. AGREEMENTS

- (a) If the Subcontractor gives the Construction Contractor any notice of any default(s) under the Subcontract that may give the Subcontractor a right to terminate the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor’s performance thereunder, then the Subcontractor shall concurrently provide DB Co and City with a copy of such notice, an executed copy of the Subcontract and set out in reasonable detail the default(s).

5. NO TERMINATION BY SUBCONTRACTOR WITHOUT DEFAULT NOTICE

The Subcontractor shall not exercise any right it may have to terminate the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder unless:

- (a) the Subcontractor first delivers an executed copy of the Subcontract and a written notice (a "Default Notice") to City setting out in reasonable detail the default(s) on which the Subcontractor intends to rely in terminating the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder; and
- (b) within a period of 5 Business Days of City receiving the Default Notice the default(s) on which the Subcontractor intends to rely in terminating the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder have not been remedied; and provided that if, within such period of 5 Business Days, City agrees to pay the Subcontractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

6. NOVATION OF THE SUBCONTRACT

- (a) The Subcontractor acknowledges and agrees that where the Design and Construction Contract has been terminated:
 - (i) by DB Co;
 - (ii) as a result of the termination of the Project Agreement; or
 - (iii) due to the insolvency of the Construction Contractor,

the Subcontract shall not terminate solely by reason of the termination of the Design and Construction Contract unless City shall have failed to request a novation of the Subcontract pursuant to Section 6(b) within 20 days following the date of such termination.

- (b) City may at any time, if the Project Agreement and the Design and Construction Contract have been terminated, deliver a notice (a "**Novation Notice**") electing to novate the Subcontract either to City or a third party designated by City in the Novation Notice (the "**Substitute**"), provided that City can demonstrate to the Subcontractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Subcontract.
- (c) Subject to Section 6(d), upon receipt by the Subcontractor of a Novation Notice:
 - (i) the Construction Contractor and the Subcontractor will be deemed to be released from their existing and future obligations under the Subcontract to each other (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and City or the Substitute, as applicable, and the Subcontractor

will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);

- (ii) the existing and future rights of the Construction Contractor against the Subcontractor under the Subcontract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and City or the Substitute, as applicable, and the Subcontractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Subcontractor to City if City pays for the Subcontractor's reasonable costs of continued performance pursuant to Section 5;
 - (iii) any guarantee, bond or covenant in favour of the Construction Contractor from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Subcontractor to be performed, observed or carried out by the Subcontractor as contained in, referred to, or inferred from the Subcontract shall be assigned, novated or granted, as required by City or the Substitute, as applicable, each acting reasonably, to City or the Substitute, as applicable, and the Subcontractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided, however, that where Construction Contractor shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Subcontractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Construction Contractor shall be conditional on the satisfaction of those obligations to Construction Contractor; and
 - (iv) at City's request, the Subcontractor shall enter into, and shall cause any guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(c)(iii) to enter into, and City shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between City or the Substitute, as applicable, and the Subcontractor, acceptable to City and the Subcontractor, each acting reasonably, on substantially the same terms as the Subcontract.
- (d) The Construction Contractor shall, at its own cost, cooperate fully with City and the Substitute in order to achieve a smooth transfer of the Subcontract to City or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Subcontract, ongoing supervisory activities and scheduling.
- (e) The rights granted by Section 6(b) shall be of no force or effect if, at any time the Subcontractor receives a Novation Notice, the Subcontractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Subcontract that it is or has validly exercised those step-in rights. If the Subcontractor receives any such notice on the same day as a Novation Notice, the Novation Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Novation Notice shall be effective.

- (f) If City gives a Novation Notice within the time provided hereunder at any time after the Subcontractor has terminated the Subcontract or treated it as having been repudiated by Construction Contractor or discontinued the Subcontractor's performance thereunder in accordance with the terms of this Subcontractor's Direct Agreement, the Subcontractor agrees that the Subcontract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and City shall pay the Subcontractor's reasonable costs for re-commencing the obligations it has under the Subcontract and the Subcontractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Subcontract or having treated it as being repudiated by Construction Contractor or having discontinued its performance thereunder.
- (g) The Subcontractor acknowledges that if City novates the Subcontract to itself pursuant to Section 6(b), City shall have the right to further novate the Subcontract to a Substitute in accordance with and otherwise on, and subject to, the terms and conditions of this Subcontractor's Direct Agreement.

7. SUBCONTRACTOR LIABILITY

- (a) The liability of the Subcontractor hereunder shall not be modified, released, diminished or in any way affected by:
 - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for City, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by City of any other person to review the progress of or otherwise report to City in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to City,

provided always that nothing in this Section 7 shall modify or affect any rights which the Subcontractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event City delivers a Novation Notice, the Subcontractor shall have no greater liability to City or any Substitute than it would have had to Construction Contractor under the Subcontract, and the Subcontractor shall be entitled in any proceedings by City or any Substitute to rely on any liability limitations in the Subcontract.

8. DB CO AND CONSTRUCTION CONTRACTOR AS PARTY

- (a) DB Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Design and Construction Contract by complying with its obligations hereunder.
- (b) Construction Contractor acknowledges and agrees that the Subcontractor shall not be in breach of the Subcontract by complying with its obligations hereunder.

9. ASSIGNMENT

- (a) Construction Contractor shall not, without the prior written consent of City, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except to the extent entitled to do so under the Design and Construction Contract.
- (b) City may assign or otherwise dispose of the benefit of the whole or part of this Subcontractor's Direct Agreement to any person to whom City may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 49.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to DB Co, the Construction Contractor and the Subcontractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of City and DB Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except as may be permitted under the Design and Construction Contract.
- (d) The Subcontractor shall not, without the prior written consent of City and DB Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except as may be permitted under the Subcontract.

10. NOTICES

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

If to City:

City of Ottawa
110 Laurier Ave West
Ottawa, Ontario K1P 1J1
Mail code: [REDACTED]

Attn.: [REDACTED]
With an electronic copy, for information purposes only, to:
[REDACTED]

If to DB Co:

East West Connectors GP
[REDACTED]

Attn: [REDACTED]

Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

If to the Construction Contractor:

[REDACTED]

Attn: [REDACTED]

Email: [REDACTED]

If to the Subcontractor:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

- (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 10(b).
- (c) Any Party to this Subcontractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 10(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 10(e), 10(f) and 10(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 10.

- (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.

11. AMENDMENTS

- (a) This Subcontractor's Direct 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 Subcontractor's Direct Agreement.

12. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Subcontractor's Direct 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.

13. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Subcontractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Subcontractor's Direct Agreement, of principal and agent.

14. ENTIRE AGREEMENT

Except where provided otherwise in this Subcontractor's Direct Agreement, this Subcontractor's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Subcontractor's Direct Agreement.

15. SEVERABILITY

Each provision of this Subcontractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Subcontractor's Direct 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 Subcontractor's Direct Agreement. If any such provision of this Subcontractor's Direct 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 Subcontractor's Direct Agreement as near as possible to its original intent and effect.

16. ENUREMENT

This Subcontractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

17. GOVERNING LAW AND JURISDICTION

- (a) This Subcontractor's Direct 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 Subcontractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Subcontractor's Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

18. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Subcontractor's Direct Agreement.

19. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Subcontractor's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

20. COUNTERPARTS

This Subcontractor's Direct 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 electronic form provided that any Party providing its signature in electronic form shall promptly forward to such Party an original signed copy of this Subcontractor's Direct Agreement which was so faxed.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Subcontractor's Direct Agreement as of the date first above written.

THE CITY OF OTTAWA

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

EAST WEST CONNECTORS GP

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

I/We have authority to bind the partnership

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the partnership

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

I have authority to bind the corporation.

SCHEDULE 3-2

SUBCONTRACTOR'S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 24th day of April, 2019

BETWEEN:

THE CITY OF OTTAWA

(“City”)

– AND –

EAST WEST CONNECTORS GP, [REDACTED]

(“DB Co”)

– AND –

[REDACTED]

(the “Construction Contractor”)

– AND –

[REDACTED]

(the “Subcontractor”)

WHEREAS:

- A. City and DB Co have entered into the Project Agreement, which requires DB Co to enter into, and to cause the Construction Contractor and the Subcontractor to enter into, this Subcontractor's Direct Agreement with City.
- B. DB Co and the Construction Contractor have entered into the Design and Construction Contract, which requires the Construction Contractor to enter into, and cause the Subcontractor to enter into, this Subcontractor's Direct Agreement with City.

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

21. DEFINITIONS

In this Schedule 3 – Subcontractor's Direct Agreement, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 3 – Subcontractor's Direct Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “Default Notice” has the meaning given in Section 5(a).

- (b) “**Novation Notice**” has the meaning given in Section 6(b).
- (c) “**Party**” means City, DB Co, the Construction Contractor or the Subcontractor, and “**Parties**” means, collectively, City, DB Co, the Construction Contractor and the Subcontractor.
- (d) “**Subcontract**” means the Nominated Signalling Subcontract.
- (e) “**Substitute**” has the meaning given in Section 6(b).

22. INTERPRETATION

This Subcontractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Subcontractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Subcontractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Subcontractor’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Subcontractor’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, 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 Subcontractor’s Direct 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 Subcontractor’s Direct 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 Subcontractor’s Direct 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 Subcontractor’s Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Subcontractor’s Direct 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 Subcontractor’s Direct 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 Subcontractor’s Direct 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 Subcontractor’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

23. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Subcontractor’s Direct Agreement, the Construction Contractor’s Direct Agreement, the Project Agreement and the Design and Construction Contract, this Subcontractor’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Subcontractor’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

24. AGREEMENTS

- (a) If the Subcontractor gives the Construction Contractor any notice of any default(s) under the Subcontract that may give the Subcontractor a right to terminate the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor’s performance thereunder, then the Subcontractor shall concurrently provide DB Co and City with a copy of such notice, an executed copy of the Subcontract and set out in reasonable detail the default(s).

25. NO TERMINATION BY SUBCONTRACTOR WITHOUT DEFAULT NOTICE

The Subcontractor shall not exercise any right it may have to terminate the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder unless:

- (a) the Subcontractor first delivers an executed copy of the Subcontract and a written notice (a "Default Notice") to City setting out in reasonable detail the default(s) on which the Subcontractor intends to rely in terminating the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder; and
- (b) within a period of 5 Business Days of City receiving the Default Notice the default(s) on which the Subcontractor intends to rely in terminating the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder have not been remedied; and provided that if, within such period of 5 Business Days, City agrees to pay the Subcontractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

26. NOVATION OF THE SUBCONTRACT

- (a) The Subcontractor acknowledges and agrees that where the Design and Construction Contract has been terminated:
 - (i) by DB Co;
 - (ii) as a result of the termination of the Project Agreement; or
 - (iii) due to the insolvency of the Construction Contractor,

the Subcontract shall not terminate solely by reason of the termination of the Design and Construction Contract unless City shall have failed to request a novation of the Subcontract pursuant to Section 6(b) within 20 days following the date of such termination.

- (b) City may at any time, if the Project Agreement and the Design and Construction Contract have been terminated, deliver a notice (a "**Novation Notice**") electing to novate the Subcontract either to City or a third party designated by City in the Novation Notice (the "**Substitute**"), provided that City can demonstrate to the Subcontractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Subcontract.
- (c) Subject to Section 6(d), upon receipt by the Subcontractor of a Novation Notice:
 - (i) the Construction Contractor and the Subcontractor will be deemed to be released from their existing and future obligations under the Subcontract to each other (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and City or the Substitute, as applicable, and the Subcontractor

will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);

- (ii) the existing and future rights of the Construction Contractor against the Subcontractor under the Subcontract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and City or the Substitute, as applicable, and the Subcontractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Subcontractor to City if City pays for the Subcontractor's reasonable costs of continued performance pursuant to Section 5;
 - (iii) any guarantee, bond or covenant in favour of the Construction Contractor from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Subcontractor to be performed, observed or carried out by the Subcontractor as contained in, referred to, or inferred from the Subcontract shall be assigned, novated or granted, as required by City or the Substitute, as applicable, each acting reasonably, to City or the Substitute, as applicable, and the Subcontractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided, however, that where Construction Contractor shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Subcontractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Construction Contractor shall be conditional on the satisfaction of those obligations to Construction Contractor; and
 - (iv) at City's request, the Subcontractor shall enter into, and shall cause any guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(c)(iii) to enter into, and City shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between City or the Substitute, as applicable, and the Subcontractor, acceptable to City and the Subcontractor, each acting reasonably, on substantially the same terms as the Subcontract.
- (d) The Construction Contractor shall, at its own cost, cooperate fully with City and the Substitute in order to achieve a smooth transfer of the Subcontract to City or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Subcontract, ongoing supervisory activities and scheduling.
- (e) The rights granted by Section 6(b) shall be of no force or effect if, at any time the Subcontractor receives a Novation Notice, the Subcontractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Subcontract that it is or has validly exercised those step-in rights. If the Subcontractor receives any such notice on the same day as a Novation Notice, the Novation Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Novation Notice shall be effective.

- (f) If City gives a Novation Notice within the time provided hereunder at any time after the Subcontractor has terminated the Subcontract or treated it as having been repudiated by Construction Contractor or discontinued the Subcontractor's performance thereunder in accordance with the terms of this Subcontractor's Direct Agreement, the Subcontractor agrees that the Subcontract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and City shall pay the Subcontractor's reasonable costs for re-commencing the obligations it has under the Subcontract and the Subcontractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Subcontract or having treated it as being repudiated by Construction Contractor or having discontinued its performance thereunder.
- (g) The Subcontractor acknowledges that if City novates the Subcontract to itself pursuant to Section 6(b), City shall have the right to further novate the Subcontract to a Substitute in accordance with and otherwise on, and subject to, the terms and conditions of this Subcontractor's Direct Agreement.

27. SUBCONTRACTOR LIABILITY

- (a) The liability of the Subcontractor hereunder shall not be modified, released, diminished or in any way affected by:
 - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for City, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by City of any other person to review the progress of or otherwise report to City in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to City,

provided always that nothing in this Section 7 shall modify or affect any rights which the Subcontractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event City delivers a Novation Notice, the Subcontractor shall have no greater liability to City or any Substitute than it would have had to Construction Contractor under the Subcontract, and the Subcontractor shall be entitled in any proceedings by City or any Substitute to rely on any liability limitations in the Subcontract.

28. DB CO AND CONSTRUCTION CONTRACTOR AS PARTY

- (a) DB Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Design and Construction Contract by complying with its obligations hereunder.
- (b) Construction Contractor acknowledges and agrees that the Subcontractor shall not be in breach of the Subcontract by complying with its obligations hereunder.

29. ASSIGNMENT

- (a) Construction Contractor shall not, without the prior written consent of City, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except to the extent entitled to do so under the Design and Construction Contract.
- (b) City may assign or otherwise dispose of the benefit of the whole or part of this Subcontractor's Direct Agreement to any person to whom City may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 49.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to DB Co, the Construction Contractor and the Subcontractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of City and DB Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except as may be permitted under the Design and Construction Contract.
- (d) The Subcontractor shall not, without the prior written consent of City and DB Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except as may be permitted under the Subcontract.

30. NOTICES

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

If to City:

City of Ottawa
110 Laurier Ave West
Ottawa, Ontario K1P 1J1
Mail code: [REDACTED]

Attn.: [REDACTED]
With an electronic copy, for information purposes only, to:
[REDACTED]

If to DB Co:

East West Connectors GP
[REDACTED]

Attn: [REDACTED]

Email: [REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

If to the Construction Contractor:

[REDACTED]

Attn: [REDACTED]

Email: [REDACTED]

If to the Subcontractor:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

- (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 10(b).
- (c) Any Party to this Subcontractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 10(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 10(e), 10(f) and 10(g):
 - (iv) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (v) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (vi) 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 10.

- (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.

31. AMENDMENTS

- (a) This Subcontractor's Direct 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 Subcontractor's Direct Agreement.

32. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Subcontractor's Direct 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.

33. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Subcontractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Subcontractor's Direct Agreement, of principal and agent.

34. ENTIRE AGREEMENT

Except where provided otherwise in this Subcontractor's Direct Agreement, this Subcontractor's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Subcontractor's Direct Agreement.

35. SEVERABILITY

Each provision of this Subcontractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Subcontractor's Direct 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 Subcontractor's Direct Agreement. If any such provision of this Subcontractor's Direct 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 Subcontractor's Direct Agreement as near as possible to its original intent and effect.

36. ENUREMENT

This Subcontractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

37. GOVERNING LAW AND JURISDICTION

- (a) This Subcontractor's Direct 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 Subcontractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Subcontractor's Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

38. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Subcontractor's Direct Agreement.

39. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Subcontractor's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

40. COUNTERPARTS

This Subcontractor's Direct 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 electronic form provided that any Party providing its signature in electronic form shall promptly forward to such Party an original signed copy of this Subcontractor's Direct Agreement which was so faxed.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Subcontractor's Direct Agreement as of the date first above written.

THE CITY OF OTTAWA

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

EAST WEST CONNECTORS GP

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

I/We have authority to bind the partnership

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the partnership

[REDACTED]

Per: _____

Name:

Title:

I have authority to bind the corporation.

SCHEDULE 4

LENDERS' DIRECT AGREEMENT

THIS LENDERS' DIRECT AGREEMENT is made as of the 24th day of April, 2019.

BETWEEN:

THE CITY OF OTTAWA ("City")

AND:

[REDACTED]

(the "**Lenders' Agent**")

AND:

EAST WEST CONNECTORS GP [REDACTED]

(the "**DB Co**")

WHEREAS:

- A. City and DB Co have entered into the Project Agreement.
- B. Under the Lending Agreements, the Financing is to be provided to DB Co by the Lenders to partially finance the Works under the Project Agreement, conditional, among other things, on DB Co executing and delivering the Lending Agreements.
- C. The Lenders' Agent has agreed to enter into this Lenders' Direct Agreement with City and DB Co in relation to the Lending Agreements, the exercise of its rights under the Lending Agreements and the remedying of breaches by DB Co under the Project Agreement.
- D. With a view to ensuring that City is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, DB Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with City throughout the duration of the Project Agreement.

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

1 DEFINITIONS AND INTERPRETATION

- 1.1** In this Schedule 4 - Lenders' Direct Agreement, all capitalized terms not otherwise defined in this Schedule 4 - Lenders' Direct Agreement shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:

- (a) **“Appointed Representative”** means any of the following to the extent so identified in an Appointed Representative Notice:
 - (i) the Lenders’ Agent, the Lenders or any Affiliate of either of them;
 - (ii) a receiver or receiver and manager or any permutation thereof of DB Co appointed under the Security Documents;
 - (iii) a trustee in bankruptcy or court appointed receiver of DB Co;
 - (iv) an administrator of DB Co;
 - (v) a person directly or indirectly owned or controlled by the Lenders’ Agent or the Lenders; or
 - (vi) any other person approved by City (such approval not to be unreasonably withheld or delayed).
- (b) **“Appointed Representative Notice”** has the meaning given in Section 8(b).
- (c) **“City Project Documents”** means the Project Agreement and all other documents to which both the City and DB Co are parties pursuant to or in connection with the Project Agreement.
- (d) **“Default Notice”** has the meaning given in Section 7(b)(i).
- (e) **“Enforcement Action”** means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (f) **“Enforcement Event”** means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (g) **“Exercise Date”** has the meaning given in Section 12(b).
- (h) **“Indebtedness Notice”** has the meaning given in Section 7(b)(ii).
- (i) **“Lender Representative”** means a representative (which may be the Lenders’ Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (j) **“Lenders’ Agent”** means [REDACTED] acting as agent for and on behalf of the Lenders.
- (k) **“Lenders’ Construction Contractor Direct Agreement”** means the direct agreement among the Lenders’ Agent, the Construction Contractor and DB Co.
- (l) **“Lenders’ Direct Agreement”** means this lenders’ direct agreement.

- (m) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (n) “**Novation Date**” has the meaning given in Section 10(a).
- (o) “**Novation Notice**” has the meaning given in Section 10(a).
- (p) “**Party**” means the City, DB Co or the Lenders’ Agent, and “**Parties**” means collectively, the City, DB Co and the Lenders’ Agent.
- (q) “**Security**” means the Insurance and any other security interests granted to the Lenders’ Agent pursuant to the Security Documents.
- (r) “**Security Documents**” means all security granted by DB Co to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
 - (i) the Lenders’ Construction Contractor Direct Agreement;
 - (ii) general security agreement between DB Co, [REDACTED] and the Lenders’ Agent dated the date of the Project Agreement;
 - (iii) limited recourse guarantee and pledge between [REDACTED] and the Lenders’ Agent dated the date of the Project Agreement;
 - (iv) limited recourse guarantee and pledge between [REDACTED] and the Lenders’ Agent dated the date of the Project Agreement;
 - (v) limited recourse guarantee and pledge between [REDACTED] and the Lenders’ Agent dated the date of the Project Agreement;
 - (vi) limited recourse guarantee and pledge between [REDACTED] and the Lenders’ Agent dated the date of the Project Agreement;
 - (vii) general blocked account agreement between DB Co, the Lenders’ Agent and [REDACTED] dated the date of the Project Agreement;
 - (viii) springing blocked account agreement between DB Co, the Lenders’ Agent and [REDACTED], dated the date of the Project Agreement;
 - (ix) Performance Guarantee of Construction Guarantor entered into by the Construction Guarantor in favour of DB Co dated the date of the Project Agreement; and
 - (x) assignment of insurances by DB Co, subject to the terms of the Insurance Trust Agreement.
- (s) “**Step-In Date**” means the date on which the City receives a Step-In Notice from the Lenders’ Agent.

- (t) “**Step-In Notice**” means the notice given by the Lenders’ Agent to the City pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (u) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:
 - (i) the Step-Out Date;
 - (ii) the Termination Date (provided that the City has complied with its obligations in Section 7 of this Lenders’ Direct Agreement);
 - (iii) the date that a transfer of DB Co’s rights and obligations under the City Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
 - (iv) if the Step-In Date occurs prior to the latest Substantial Completion Date, the earlier of:
 - (A) the date falling 180 days after the Longstop Date; or
 - (B) the date falling 2 years after the Step-In Date.
- (v) “**Step-Out Date**” means the date falling 30 days after the date on which the City receives a Step-Out Notice.
- (w) “**Step-Out Notice**” has the meaning given in Section 9(a).
- (x) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (y) “**Suitable Substitute**” means a person, approved in writing by the City in accordance with Sections 10(b) and 10(c), which:
 - (i) has the legal capacity, power and authority to become a party to and perform the obligations of DB Co under the City Project Documents; and
 - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of DB Co under the City Project Documents.

2 INTERPRETATION

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

- (a) The headings in this Lenders’ Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders’ Direct Agreement, and shall not be taken into

consideration in the interpretation of, or affect the meaning of, this Lenders' Direct Agreement.

- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders' Direct Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, 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 Lenders' Direct 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 Lenders' Direct 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 Lenders' Direct 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 Lenders' Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders' Direct 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 Lenders' Direct 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 Lenders' Direct 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 Ottawa, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Lenders' Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

3 CONFLICT OF DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Lenders' Direct Agreement, the Project Agreement and the Construction Contractor's Direct Agreement, the provisions of this Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

4 TERM

- (a) This Lenders' Direct Agreement shall terminate automatically on the earliest of:
 - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
 - (ii) the Termination Date (provided that the City has complied with its obligations in Section 7 of this Lenders' Direct Agreement); and
 - (iii) the date that any transfer of DB Co's rights and obligations under the City Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within 30 days following its occurrence, the Lenders' Agent shall provide notice to the City of the date referred to in Section 4(a)(i).

5 AGREEMENTS AND SECURITY

- (a) DB Co and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where DB Co is permitted to do so pursuant to Section 8.3 of the Project Agreement.
- (b) DB Co shall not, prior to the latest Substantial Completion Date, exercise any rights of voluntary prepayment, voluntary redemption, or other voluntary repayment of loan, as applicable, under the Lending Agreements without the prior written consent of the City, acting in its sole discretion. In exercising its sole discretion to grant consent, the City

shall be entitled to request and consider, and DB Co shall be required to provide within 10 Business Days following a request by the City, amongst other things and not limited to, the following:

- (i) written certification by an officer of DB Co of the remaining Project Costs (as defined in the Lending Agreements) accrued and unpaid or expected to be incurred to achieve all remaining Substantial Completions and to fund any Project Accounts (as defined in the Lending Agreements) then not funded and required to be funded at or prior to the then anticipated prepayment and/or redemption (as approved by [REDACTED] (as defined in the Lending Agreements)) by the latest Substantial Completion Date;
 - (ii) written certification by an officer of DB Co that no Funding Shortfall (as defined in the Lending Agreements) would reasonably be expected to arise as a consequence of such prepayment and/or redemption, including any related cancellation of unutilized commitments, if applicable, under the Lending Agreements;
 - (iii) written confirmation from the Lenders' Consultant, addressed to the City, that the DB Co's calculation in Section 5(b)(i) and DB Co's certification in Section 5(b)(ii) is, in the opinion of the Lenders' Consultant, correct;
 - (iv) written confirmation from the Lenders' Consultant, addressed to the City, that no incremental delay in achieving the any Substantial Completion Date (beyond the applicable Scheduled Substantial Completion Date) would reasonably be expected as a consequence of such prepayment and/or redemption and related cancellation of unutilized commitments, if applicable, under the Lending Agreements; and
 - (v) written confirmation from the Lenders' Consultant, addressed to the City, that the remaining Substantial Completion Dates are likely to occur on or prior to the then Scheduled Substantial Completion Dates.
- (c) DB Co and the City shall not amend or modify the City Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Lenders or DB Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(c) within 30 days following receipt thereof.
- (d) DB Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (e) The Lenders' Agent acknowledges having received a copy of the Project Agreement.

- (f) The City acknowledges having received copies of the Lending Agreements, and confirm that they are in form and substance satisfactory to the City as at the date of Financial Close.
- (g) The City acknowledges notice of and consents to the Security, and confirm that they have not received notice of any other security interest granted over DB Co's rights under any of the City Project Documents.
- (h) DB Co and the City agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, the City shall pay any sum which they are obliged to pay to DB Co under the Project Agreement to a bank account specified by the Lenders' Agent.
- (i) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, the City shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of DB Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to DB Co.
- (j) The Lenders' Agent shall cause the Lenders' Consultant to provide the City with a copy of any written assessment or report prepared by the Lenders' Consultant in relation to the status or progress of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent. The Lenders' Agent acknowledges and agrees that this Section 5(j) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, a copy of any and all of its written assessments and reports to the City.
- (k) The City shall provide the Lenders' Agent with copies of any notice of default given to DB Co under the Project Agreement at the same time such notice is given to DB Co.

6 ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify the City of any Enforcement Event, any Enforcement Action, any notice from the Lenders to DB Co to accelerate the maturity of any amounts owing by DB Co to the Lenders under the Lending Agreements or any notice from the Lenders to DB Co to demand repayment of any amounts owing by DB Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
 - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 28 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
 - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing

or activities may compromise (i) the City's reputation or integrity, or (ii) the nature of the public transit system in the City of Ottawa or the Province of Ontario so as to affect public confidence in the public transit system in the City of Ottawa, the Province of Ontario or the Project.

- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7 TERMINATION OF PROJECT AGREEMENT BY THE CITY

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, the City may, at any time, serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), the City shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a DB Co Event of Default unless:
 - (i) the City promptly delivers written notice (a "**Default Notice**") to the Lenders' Agent setting out the DB Co Event of Default in reasonable detail;
 - (ii) not later than 30 days after the date of a Default Notice, the City delivers written notice (an "**Indebtedness Notice**") to the Lenders' Agent setting out:
 - (A) all amounts owed by DB Co to the City and any other existing liabilities and unperformed obligations of DB Co to the City of which the City is aware (having made reasonable enquiry), in each case, as of the date on which the City sent the Default Notice; and
 - (B) all amounts which will become owing by DB Co to the City and any other liabilities and obligations of DB Co to the City of which the City is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
 - (iii) the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- (c) At any time after the City sends an Indebtedness Notice but before the City receives a Step-In Notice, if the City discovers amounts that have become owing by DB Co to the City or any other liabilities or obligations of DB Co to the City that have come due but which were not included in the Indebtedness Notice, the City shall deliver written notice (a "**Subsequent Indebtedness Notice**") to the Lenders' Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, the City shall not terminate the Project Agreement on grounds:

- (i) that the Lenders' Agent has served a Step-In Notice or enforced any Security Document; or
 - (ii) arising prior to the Step-In Date of which the City was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
 - (A) the grounds arose prior to the latest Substantial Completion Date, and the latest Substantial Completion Date does not occur on or before the date falling 180 days after the Longstop Date; or
 - (B) the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
 - (iii) arising solely in relation to DB Co.
- (e) The City shall be entitled to terminate the Project Agreement by written notice to DB Co and the Appointed Representative:
- (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to the City on or before the Step-In Date;
 - (ii) if any amount referred to in Section 7(b)(ii)(B) has not been paid on or before the last day of the Notice Period;
 - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; or
 - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement.

8 STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give the City a Step-In Notice at any time:
- (i) during which a DB Co Event of Default is subsisting (whether or not a Default Notice has been served); or
 - (ii) during the Notice Period;
 - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to the City of:
- (i) its intention to deliver a Step-In Notice; and

- (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with DB Co, all of DB Co's rights under the City Project Documents.
- (d) During the Step-In Period, the City shall deal with the Appointed Representative instead of DB Co in connection with all matters related to the City Project Documents. DB Co agrees to be bound by all such dealings between the City and the Appointed Representative to the same extent as if they had been between the City and DB Co.

9 STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to the City to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
 - (i) the rights and obligations of the Appointed Representative in relation to the City under the City Project Documents arising prior to the expiry of the Step-In Period will be assumed by DB Co to the exclusion of the Appointed Representative;
 - (ii) the City will no longer deal with the Appointed Representative and will deal with DB Co in connection with all matters related to the City Project Documents; and
 - (iii) the Appointed Representative and the City shall be and hereby are released from all obligations and liabilities to one another under the City Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

10 NOVATION TO SUITABLE SUBSTITUTE

- (a) Subject to Section 10(b), at any time:
 - (i) after an Enforcement Event has occurred;
 - (ii) during the Notice Period; or
 - (iii) during the Step-In Period,

the Lenders' Agent may deliver to the City and any Appointed Representative written notice (a "**Novation Notice**") that it wishes to transfer DB Co's rights and obligations under the City Project Documents to a proposed transferee, together with all information reasonably necessary for the City to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which the City receives the Novation Notice ("**Novation Date**") for the transfer of DB Co's rights and obligations under the City Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) The City shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. The City shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer DB Co's rights and liabilities under the City Project Documents is approved by the City as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by the City of the Novation Notice and the date of receipt of any additional information requested by the City. For greater certainty, if the City fails to respond within such period, the City shall be deemed not to have approved the proposed transferee.
- (c) The City shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for the City to withhold its approval if:
 - (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to the City, acting reasonably, in respect of such breaches;
 - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a DB Co Party pursuant to the Project Agreement; or
 - (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the City Project Documents or have the effect of increasing any liability of the City, whether actual or potential.
- (d) If the City withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to the City, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
 - (i) DB Co and the City will be released from their obligations under the City Project Documents to each other, and the Suitable Substitute and the City will assume those same obligations towards each other;
 - (ii) each of the rights of DB Co against the City under the City Project Documents and the rights of the City against DB Co under the City Project Documents will be cancelled, and the Suitable Substitute and the City will acquire those same rights against each other;
 - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or

other documents as are reasonably necessary to give effect to the foregoing, including:

- (A) an agreement between the City and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
 - (B) an agreement among the City, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
- (iv) any subsisting ground for termination by the City of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11 TRANSFERS

The City shall, at DB Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

12 CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT

- (a) Notwithstanding any provision in the Construction Contractor's Direct Agreement, the City hereby undertakes that it will not exercise any rights they may have under or arising out of any of the Construction Contractor's Direct Agreement, except as provided in Sections 12(b) to 12(f) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, the City shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Construction Contractor's Direct Agreement to step in to and/or novate the Design and Construction Contract in accordance with the Construction Contractor's Direct Agreement.
- (c) Following the Exercise Date, the City shall not do anything to prejudice the rights which are not transferred to them pursuant to the Construction Contractor's Direct Agreement.
- (d) Where all amounts which may be or become owing by DB Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of the Design and Construction Contract assumed or novated by the City pursuant to the Construction Contractor's Direct Agreement.
- (e) Notwithstanding the terms of the Construction Contractor's Direct Agreement and any other provisions of this Section 12, the Construction Contractor (and any guarantor thereof) shall remain responsible, and be liable, to DB Co in respect of all costs, claims,

damages, losses and liabilities which shall have arisen out of or in connection with the Design and Construction Contract in respect of the period prior to the Exercise Date.

- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, the City shall not, prior to the date on which this Lenders' Direct Agreement terminates:
- (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Construction Contractor's Direct Agreement (and/or the Design and Construction Contract) from the Construction Contractor;
 - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor; or
 - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

The City agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

13 SUBCONTRACTOR'S DIRECT AGREEMENT

Notwithstanding any provision in a Subcontractor's Direct Agreement, the City hereby undertakes that it will not exercise any rights they may have under or arising out of any Subcontractor's Direct Agreement unless:

- (a) the Project Agreement and the Design and Construction Contract have been terminated;
- (b) the City is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lender's Direct Agreement; or
- (c) the City is entitled to exercise its rights under the Construction Contractor's Direct Agreement pursuant to Section 12(b).

14 PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

Notwithstanding any provision in the Performance Guarantee of Construction Guarantor, the City hereby undertakes that it will not exercise any rights it may have under or arising out of the Performance Guarantee of Construction Guarantor unless:

- (a) the Project Agreement has been terminated; or
- (b) the City is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement.

15 NOTICE OF DB CO DELAY OR PROCEEDING AT RISK

- (a) The Parties acknowledge that, if DB Co is deemed to be failing to maintain the schedule pursuant to Schedule 12 – Works Scheduling Requirements, or Proceeding At Risk pursuant to Section 14.6(g) of the Project Agreement, the City may, in its sole discretion, give notice to the Lenders' Agent that DB Co is failing to maintain the schedule or Proceeding At Risk, together with the relevant information supporting the City's opinion that DB Co is failing to maintain the schedule or Proceeding At Risk.

16 ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 16.
- (b) DB Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom DB Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 49.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to the City and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of DB Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, the City and the Lenders' Agent, each acting reasonably. The City and the Lenders' Agent shall, at DB Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) The City may assign, transfer or otherwise dispose of the benefit of the whole or part of this Lenders' Direct Agreement to any person to whom the City assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 49.2 of the Project Agreement, and shall provide written notice to DB Co and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of the City under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, DB Co and the Lenders' Agent, each acting reasonably. DB Co and the Lenders' Agent shall, at the City's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to DB Co and the City of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lenders' Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with DB Co and the City on substantially the same terms as this Lenders' Direct Agreement and DB Co and the City shall enter into such new agreement with the assignee. DB Co and the City shall, at the Lenders' Agent's cost and

expense, do all things and execute all further documents as may be necessary in connection therewith.

17 NOTICES

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

If to the City:

City of Ottawa
110 Laurier Ave West
Ottawa, Ontario K1P 1J1
Mail code: [REDACTED]

Attention: [REDACTED]

With an electronic copy, for information purposes only, to: [REDACTED]

If to the Lenders' Agent:

[REDACTED]

Fax No.: [REDACTED]

Email: [REDACTED]

Attn.: [REDACTED]

If to DB Co:

East West Connectors GP
[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]
[REDACTED]

with a copy to:

[REDACTED]

Attn.: [REDACTED]

Email: [REDACTED]

If to the Construction Guarantor:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

and

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

with a copy to:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

and

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

- (b) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 17(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.
- (c) Subject to Sections 17(d) and 17(e):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) 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 by personal delivery in accordance with this Section 17.
- (e) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted 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 following Business Day.

18 AMENDMENTS

This Lenders' Direct 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 Lenders' Direct Agreement.

19 WAIVER

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct 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

The Parties are independent contractors. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Lenders' Direct Agreement, of principal and agent.

21 ENTIRE AGREEMENT

Except where provided otherwise in this Lenders' Direct Agreement, this Lenders' Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Lenders' Direct Agreement.

22 SEVERABILITY

Each provision of this Lenders' Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lenders' Direct 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 Lenders' Direct Agreement. If any such provision of this Lenders' Direct 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 Lenders' Direct Agreement as near as possible to its original intent and effect.

23 ENUREMENT

This Lenders' Direct 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 Lenders' Direct 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 Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Lenders' Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

25 DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

26 FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

27 LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Lenders' Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

28 COUNTERPARTS

This Lenders' Direct 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 Lenders' Direct Agreement which was so faxed.

29 CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on DB Co by the provisions of Section 42 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be

permitted to disclose to any relevant regulatory authority only such Confidential Information (as defined in the Project Agreement) as is necessary for the Lenders' Agent to comply with Applicable Law.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Lenders' Direct Agreement as of the date first above written.

THE CITY OF OTTAWA

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[REDACTED]

Per: _____

Per: _____

I/We have authority to bind the corporation.

EAST WEST CONNECTORS GP

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

SCHEDULE 5

CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 24th day of April, 2019

BETWEEN:

THE CITY OF OTTAWA

(the “City”)

- AND -

EAST WEST CONNECTORS GP, [REDACTED]

(“DB Co”)

- AND -

[REDACTED]

(the “Construction Contractor”)

- AND -

[REDACTED]

(each a “Construction Guarantor”, collectively the “Construction Guarantors”)

WHEREAS:

- A. The City and DB Co have entered into the Project Agreement, which requires DB Co to enter into, and to cause the Construction Contractor and the Construction Guarantors to enter into, this Construction Contractor's Direct Agreement with the City.
- B. DB Co and the Construction Contractor have entered into the Design and Construction Contract, which requires the Construction Contractor and the Construction Guarantor to enter into this Construction Contractor's Direct Agreement with the City.

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

1. DEFINITIONS

In this Schedule 5 – Construction Contractor's Direct Agreement, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this in this Schedule 5 – Construction Contractor's Direct Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Default Notice**” has the meaning given in Section 5(a).
- (b) “**Party**” means the City, the Construction Contractor, each of the Construction Guarantors or DB Co, and “**Parties**” means, collectively, the City, the Construction Contractor, the Construction Guarantors and DB Co.
- (c) “**Step-In Notice**” has the meaning given in Section 6(a).
- (d) “**Substitute**” has the meaning given in Section 6(a).

2. INTERPRETATION

This Construction Contractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Construction Contractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction Contractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Construction Contractor’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, 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 Construction Contractor’s Direct 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 Construction Contractor’s Direct 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 Construction Contractor's Direct 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 Construction Contractor's Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Construction Contractor's Direct 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 Construction Contractor's Direct 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 Construction Contractor's Direct 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 Ottawa, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Construction Contractor's Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement, the Project Agreement and the Design and Construction Contract, this Construction Contractor's Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

4. AGREEMENTS

- (a) DB Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Design and Construction Contract without the prior written consent of the City, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability

of DB Co or the Construction Contractor to perform its obligations under this Construction Contractor's Direct Agreement and does not have the effect of increasing any liability of the City, whether actual or potential. The City shall respond to any request for consent under this Section 4(a) within 30 days following its receipt thereof. DB Co and the Construction Contractor shall provide to the City a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Design and Construction Contract.
- (c) If the Construction Contractor gives DB Co any notice of any default(s) under the Design and Construction Contract that may give the Construction Contractor a right to terminate the Design and Construction Contract or to treat it as having been repudiated by DB Co or to discontinue the Construction Contractor's performance thereunder, then the Construction Contractor shall concurrently provide the City with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE

The Construction Contractor shall not exercise any right it may have to terminate the Design and Construction Contract or to treat it as having been repudiated by DB Co or to discontinue the Construction Contractor's performance thereunder unless:

- (a) the Construction Contractor first delivers a written notice (a "**Default Notice**") to the City setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Design and Construction Contract or to treat it as having been repudiated by DB Co or to discontinue the Construction Contractor's performance thereunder; and
- (b) within a period of ten Business Days of the City receiving the Default Notice:
 - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Design and Construction Contract or to treat it as having been repudiated by DB Co or to discontinue the Construction Contractor's performance thereunder have not been remedied; and
 - (ii) the Construction Contractor has not received a Step-In Notice from the City,

provided that if, within such period of ten Business Days, the City agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of five Business Days shall be extended to 45 days.

6. STEP-IN RIGHTS

- (a) The City may at any time:
 - (i) within five Business Days or, if such period has been extended in accordance with Section 5, 45 days of the City receiving a Default Notice; or

- (ii) if the City has not received a Default Notice and if the City's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace DB Co under the Design and Construction Contract either with the City or a third party designated by the City in the Step-In Notice (the "**Substitute**"), provided that the City can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, and have the legal capacity, power and authority, to carry out the obligations of the Substitute under the Design and Construction Contract.

- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:
 - (i) DB Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Design and Construction Contract to each other (except with respect to any and all indemnities from DB Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and the City or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of DB Co against the Construction Contractor under the Design and Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from DB Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and the City or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to the City if the City pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;
 - (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of DB Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Design and Construction Contract shall be assigned, novated or granted, as required by the City or the Substitute, as applicable, each acting reasonably, to the City or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where DB Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security, as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond or covenant, letter of credit or similar performance security to the extent of any such obligations to DB Co shall be conditional on the satisfaction of those obligations to DB Co; and

- (iv) at the City's request, the Construction Contractor shall enter into, and shall cause the Construction Guarantors and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and the City shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between the City or the Substitute, as applicable, and the Construction Contractor, acceptable to the City and the Construction Contractor, each acting reasonably, on substantially the same terms as the Design and Construction Contract.
- (c) Subject to Section 6(d), DB Co shall, at its own cost, cooperate fully with the City and the Substitute in order to achieve a smooth transfer of the Design and Construction Contract to the City or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Design and Construction Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Design and Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If the City gives a Step-In Notice within 60 days after the Construction Contractor has terminated the Design and Construction Contract or treated it as having been repudiated by DB Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Design and Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and the City shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Design and Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Design and Construction Contract or having treated it as being repudiated by DB Co or having discontinued its performance thereunder.

7. CONSTRUCTION CONTRACTOR LIABILITY

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
 - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for the City, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by the City of any other person to review the progress of or otherwise report to the City in respect of the Project, or by any action or omission

of such person whether or not such action or omission might give rise to any independent liability of such person to the City,

provided always that nothing in this Section 7 shall modify or affect any rights which the Construction Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event the City delivers a Step-In Notice, the City or any Substitute rights shall be subject to all of the rights and remedies available to the Construction Contractor under the Design and Construction Contract and the Construction Contractor shall have no greater liability to the City or any Substitute than it would have had to DB Co under the Design and Construction Contract, and the Construction Contractor shall be entitled in any dispute or proceedings involving the City or any Substitute to raise, enforce or rely on any defenses, conditions and liability limitations in the Design and Construction Contract.

8. DB CO AS PARTY

DB Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Design and Construction Contract by complying with its obligations hereunder.

9. CONSTRUCTION GUARANTORS AS PARTY

The Construction Guarantors agree with the City that the Construction Guarantors have entered into a guarantee or covenant referred to in Section 6(b)(iii) and, subject to Sections 6(a) and (d), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of the City, and agree that the Construction Guarantors shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Construction Guarantors enter into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) DB Co shall not, without the prior written consent of the City, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement. Any permitted assignee of DB Co, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of DB Co under this Construction Contractor's Direct Agreement pursuant to an assumption agreement with, and in a form and substance satisfactory to City and the Construction Contractor, each acting reasonably. City and the Construction Contractor shall, at DB Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (b) The City may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom the City may assign or otherwise dispose of their interest in the Project Agreement pursuant to Section 49.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to DB Co and the Construction Contractor of such assignment or disposition. Such

assignee, as a condition precedent to any such assignment or other disposition, shall assume the obligations and acquire the rights of City under this Construction Contractor's Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, DB Co and the Construction Contractor, each acting reasonably. DB Co and the Construction Contractor shall, at City's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

- (c) The Construction Contractor shall not, without the prior written consent of the City and DB Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except as may be permitted under the Design and Construction Contract. Such assignee, as a condition precedent to any such assignment, transfer, charge, subcontract, subparticipate or other disposition, shall assume the obligations and acquire the rights of the Construction Contractor under this Construction Contractor's Direct Agreement pursuant to an assumption agreement with, and in a form and substance satisfactory to the City and DB Co, each acting reasonably. The City and DB Co shall, at the Construction Contractor's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

11. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Construction Contractor's Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Construction Contractor's Direct Agreement) and served by sending the same by registered mail, facsimile or by hand (in each case, with a copy by electronic transmission), as follows:

If to the City :

City of Ottawa
110 Laurier Ave West
Ottawa, Ontario K1P 1J1
Mail code: [REDACTED]

Attention: [REDACTED]
With an electronic copy, for information purposes only, to: [REDACTED]

If to DB Co:

East West Connectors GP
[REDACTED]

Attn.: [REDACTED]
Email: [REDACTED]
[REDACTED]

with a copy to:

[REDACTED]

Attn: [REDACTED]

Email: [REDACTED]

If to the Construction Contractor:

[REDACTED]

Attn: [REDACTED]

Email: [REDACTED]

If to the Construction Guarantors:

[REDACTED]

Fax No: [REDACTED]

Attn: [REDACTED]

and

[REDACTED]

Fax No: [REDACTED]

Attn: [REDACTED]

with a copy to:

[REDACTED]

Fax No: [REDACTED]

Attn: [REDACTED]

and

[REDACTED]

Fax No: [REDACTED]

Attn: [REDACTED]

- (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 11(b).
- (c) Any Party to this Construction Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(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 11(e), 11(f) and 11(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 11.
- (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.

12. AMENDMENTS

This Construction Contractor's Direct 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 Construction Contractor's Direct Agreement.

13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Construction Contractor's Direct 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.

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Construction Contractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Construction Contractor's Direct Agreement, of principal and agent.

15. ENTIRE AGREEMENT

Except where provided otherwise in this Construction Contractor's Direct Agreement, this Construction Contractor's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Construction Contractor's Direct Agreement.

16. SEVERABILITY

Each provision of this Construction Contractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Construction Contractor's Direct 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 Construction Contractor's Direct Agreement. If any such provision of this Construction Contractor's Direct 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 Construction Contractor's Direct Agreement as near as possible to its original intent and effect.

17. ENUREMENT

This Construction Contractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

- (a) This Construction Contractor's Direct 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 Construction Contractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Construction Contractor's Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

19. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Construction Contractor's Direct Agreement.

20. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Construction Contractor's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

21. COUNTERPARTS

This Construction Contractor's Direct 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 electronic form provided that any Party providing its signature in electronic form shall promptly forward to such Party an original signed copy of this Construction Contractor's Direct Agreement which was so faxed.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Construction Contractor's Direct Agreement as of the date first above written.

CITY OF OTTAWA

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation

EAST WEST CONNECTORS GP

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the partnership

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the Corporation

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the Corporation

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the Corporation

**SCHEDULE 6
INDEPENDENT CERTIFIER AGREEMENT**

THIS AGREEMENT is made as of the 25th day of April, 2019

BETWEEN:

THE CITY OF OTTAWA

(“City”)

- and -

EAST WEST CONNECTORS GP, [REDACTED]

(“DB Co”)

- and -

[REDACTED]

(the “Independent Certifier”)

WHEREAS:

- (A) The City and DB 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 Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- (C) The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

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

1 DEFINITIONS

1.1 Definitions

- (a) In this Independent Certifier 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 Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (i) **“Certification Services”** means:
 - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
 - (C) all other functions or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
- (ii) **“Certification Services Variation”** is any change to the Certification Services.
- (iii) **“Contract Material”** means all material:
 - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services, including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
- (iv) **“Contribution Agreement”** means either the agreement entered into by the City and the Government of Canada, represented by the Ministry of Infrastructure and Communities, or the agreement entered into by the City and the Government of Ontario, represented by the Ministry of Transportation, for the contribution of funding for the Project, and **“Contribution Agreements”** means both.
- (v) **“Contribution Agreement Party”** means either the Government of Canada, represented by the Ministry of Infrastructure and Communities, or the Government of Ontario, represented by the Ministry of Transportation, and **“Contribution Agreement Parties”** means both.
- (vi) **“Earned Value Measurement Techniques”** means the techniques used to measure Earned Value established by DB Co and agreed with the Independent Certifier in accordance with the “Practice Standard for Earned Value Management” (2nd Edition, published in 2011 by the Project Management Institute, Inc.).

- (vii) “**Fee**” means the fees payable by the City and DB Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
- (viii) “**IC Monthly Report**” has the meaning given in Appendix A to this Independent Certifier Agreement.
- (ix) “**IC Quarterly Report**” has the meaning given in Appendix A to this Independent Certifier Agreement.
- (x) “**Intellectual Property**” means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know- how, trade secrets, confidential information and trade or business names.
- (xi) “**PA Parties**” means both the City and DB Co, and “**PA Party**” means either the City or DB Co, as the context requires.
- (xii) “**Project Agreement**” means that certain project agreement made on or about the date hereof between the City and DB Co with respect to the design, construction and financing of the Confederation Line Extension Project.

2 INTERPRETATION

2.1 Interpretation

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
 - (i) words denoting the singular number include the plural and vice versa;
 - (ii) words denoting individuals include corporations and vice versa;
 - (iii) headings are for convenience only and do not affect interpretation;
 - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
 - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
 - (vii) words denoting any gender include all genders;

- (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (ix) a reference to “\$” is to Canadian currency;
- (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
- (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
- (xii) unless otherwise indicated, all time periods will be strictly construed.

2.2 Obligations and Exercise of Rights by PA Parties

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

3 ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and DB Co shall ensure that no DB Co Party enters into any separate agreement with the Independent Certifier in connection with the Project. The Independent Certifier shall not enter into any separate agreement with either PA Party in connection with the Project without the prior written consent of the other PA Party.
- (d) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to DB Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Sections 9.4 and 9.5 of this Independent Certifier Agreement.

- (e) The PA Parties acknowledge and agree that the Independent Certifier may rely on the assessment report prepared by the Independent Safety Assessor with respect to the safety certification of the System Infrastructure. The Independent Certifier acknowledges and agrees that, in carrying out the Certification Services, it shall be bound to the assessment report and shall consider the Independent Safety Assessor's views with respect to the safety of the System Infrastructure in making its determination as to whether Project Co has satisfied the conditions of Substantial Completion.
- (f) The PA Parties acknowledge and agree that notwithstanding anything to the contrary in this Agreement the Certification Services described in paragraph (bb) of Appendix A do not, nor shall such Certification Services be construed so as to, change, modify or have any impact whatsoever on the PA Parties' respective rights, entitlements and obligations as against each other pursuant to the provisions of the Project Agreement.
- (g) In carrying out the Certification Services, the Independent Certifier may rely upon the reports, findings and determination of the Systems Integration Verifier, pertaining to the Systems Integration Works, provided in accordance with the terms of the Project Agreement.

3.2 Acknowledgement of Independent Certifier

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

3.4 Duty of Independent Judgment

- (a) In exercising its Certification Services, the Independent Certifier must:
 - (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
 - (ii) act reasonably and professionally;
 - (iii) act in a timely manner:
 - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
 - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and

- (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier represents and warrants that will use its best skill and judgment in providing the Certification Services, and that information provided and/or submitted to the PA Parties in accordance with this Independent Certifier Agreement is true and accurate, and prepared in good faith to the best of the Independent Certifier's skill, judgment and knowledge.
- (d) The Independent Certifier acknowledges that all Certification Services, Contract Material and all determinations, findings, reports, certificates and other information delivered by the Independent Certifier to the City pursuant to the Project Agreement may be relied upon by the Contribution Agreement Parties, and that the Independent Certifier shall owe each an equal duty of care as is owed to the City hereunder, notwithstanding the fact that the Contribution Agreement Parties are not parties to this Independent Certifier Agreement or the Project Agreement. The Independent Certifier will confirm the foregoing directly to either Contribution Agreement Party, if requested by the City.

3.5 Authority to Act

- (a) The Independent Certifier:
 - (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
 - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.
- (b) The Independent Certifier will confirm the foregoing directly to either Contribution Agreement Party, if requested by the City.

3.6 Knowledge of the PA Parties' Requirements

- (a) The Independent Certifier warrants that:

- (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
- (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
- (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
- (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at or on the Lands and Site including restrictions on any such access or protocols that are required; and
- (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

3.7 Co-ordination and Information by Independent Certifier

- (a) The Independent Certifier must:
 - (i) fully cooperate with the PA Parties and their consultants and advisors;
 - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
 - (iii) carefully co-ordinate the Certification Services with the safety assessment performed by the Independent Safety Assessor;
 - (iv) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties;
 - (v) include both PA Parties in all discussions, meetings, or any other communications regarding the Project;
 - (vi) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party; and
 - (vii) provide a copy of the Contract Material to each of the Contribution Agreement Parties at the same time as it is provided to the PA Parties. In respect of such Contract Material, either Contribution Agreement Party may make inquiries of the Independent Certifier and request further investigation or clarification in connection with, and subject to, its contribution agreement.

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
 - (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as a technical advisor to the Lenders or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
 - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) Any replacement of the individuals listed in Appendix C is subject to the PA Parties' prior written approval.
- (c) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, and the Testing & Commissioning Program shall:
 - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, The Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
 - (ii) have demonstrated competence in the commissioning of comparable facilities and in having completed or monitored the commissioning of a comparable light rail transit system;
 - (iii) have an understanding of the appropriate standards, guidelines and policies related to commissioning for light rail transit systems, as well as other applicable transit commissioning standards; and
 - (iv) have an understanding of the commissioning process and the reports to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but the pre-commissioning and post- commissioning activities.

- (d) The Independent Certifier shall furnish City with evidence satisfactory to City of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program.
- (e) The Independent Certifier shall ensure that its personnel who will prepare and evaluate construction and development information for Works measurements for payment possess a current professional designation of not less than Professional Quantity Surveyors (PQS).

3.10 Minimize Interference

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

4 ROLE OF THE PA PARTIES

4.1 Assistance

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

4.2 Instructions in Writing

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

4.3 Information and Services

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to certify Construction Period Payments and to determine whether any Substantial Completion and any Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
 - (i) the Independent Certifier must give notice in writing to the DB Co Representative or the City Representative, as the case may be, of the details of

the information, documents or particulars demonstrating the need and the reasons why they are required; and

- (ii) DB Co or the City, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the DB Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Lands, the New City Infrastructure, the New MTO Infrastructure or Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
 - (i) observance of the reasonable rules of DB Co as to safety and security for the Lands, the New City Infrastructure, the New MTO Infrastructure or Works;
 - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Lands, the New City Infrastructure, the New MTO Infrastructure or Works; and
 - (iii) not causing any damage to the Lands, the New City Infrastructure, the New MTO Infrastructure or Works.

4.6 PA Parties Not Relieved

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5 CERTIFICATION QUALITY PLAN

5.1 Certification Quality Plan

- (a) The Independent Certifier must:
 - (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services, including but not limited to timelines, deliverables and input required from the PA Parties, that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the City Representative and the DB Co Representative;

- (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the City Representative and the DB Co Representative;
- (iii) if satisfactory to each of the City Representative and the DB Co Representative, implement such certification quality plan; and
- (iv) if not satisfactory to each of the City Representative and the DB Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the City Representative and the DB Co Representative, and implement it if satisfactory to each of the City Representative and the DB Co Representative.

5.2 Certification Quality Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
 - (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
 - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the City Representative or the DB Co Representative.

6 SUSPENSION

6.1 Notice

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
 - (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
 - (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:
 - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Article 9; and
 - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Sections 6.1(a)(i).

6.3 Recommencement

The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

7 INSURANCE AND LIABILITY

7.1 Independent Certifier's Professional Indemnity Insurance

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
 - (i) professional liability insurance:
 - (A) in the amount of \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
 - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
 - (ii) comprehensive general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

7.2 Workers' Compensation Insurance

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

8 PAYMENT FOR SERVICES

8.1 Payment of Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay [REDACTED] of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.

- (b) The obligation of each PA Party to pay **[REDACTED]** of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non- payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overheads and profit, all labour and materials, insurance costs, travel, hospitality, food and incidental expenses, and all other overhead including any fees or other charges required by law, to perform the Certification Services.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of **\$(REDACTED)** is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

9 CERTIFICATION SERVICES VARIATIONS

9.1 Notice of Certification Services Variation

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
 - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
 - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the City Representative and the DB Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

9.2 No Adjustment

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

9.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

9.4 Certification Services Variation Procedure

- (a) The City Representative and the DB Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the City Representative and the DB Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the City Representative and the DB Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

9.5 Cost of Certification Services Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
 - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
 - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the City Representative and the DB Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10 TERM AND TERMINATION

10.1 Term

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
 - (i) the latest Final Completion Date; or
 - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
 - (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

10.3 Termination for Breach

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

10.4 Termination for Financial Difficulty or Change in Control

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
 - (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
 - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

10.5 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

10.6 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
 - (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
 - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and

- (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

10.7 Procedure upon Termination

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4 or 10.5 or otherwise), the Independent Certifier must:
 - (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
 - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
 - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

10.8 Effect of Termination

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

10.9 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11 INDEMNITY

11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:

- (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);
 - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
 - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.2 Independent Certifier to Save PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not apply to the extent:
- (i) any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1) directly caused the losses described in Section 11.2(a); or
 - (ii) any insurance proceeds are recoverable by such PA Party in respect of the losses described in Section 11.2(a).
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.3 Conduct of Claims

- (a) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix D – Conduct of Claims to this Independent Certifier Agreement.

12 GENERAL

12.1 Entire Agreement

- (a) Except where provided otherwise in this Independent Certifier Agreement, this Independent Certifier Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Independent Certifier Agreement.

12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

- (a) No waiver made or given by a party under or in connection with this Independent Certifier 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.

12.4 Notices

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

If to City:

City of Ottawa

110 Laurier Ave West
Ottawa, Ontario
K1P 1J1
Mail code: [REDACTED]

Attn: [REDACTED]
Email: [REDACTED]

If to DB Co: East West Connectors GP

[REDACTED]

Attn.: **[REDACTED]**
Email: **[REDACTED]**

with a copy to: **[REDACTED]**

[REDACTED]

Attn.: **[REDACTED]**
Email: **[REDACTED]**

If to Independent Certifier: **[REDACTED]**

[REDACTED]

Fax: **[REDACTED]**
Attn.: **[REDACTED]**
Email: **[REDACTED]**

- (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 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(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 12.4(e), 12.4(f) and 12.4(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 12.4.
- (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.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion (including, in respect of the City, if so required pursuant to a Contribution Agreement); and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

12.6 Governing Laws and Jurisdictions

- (a) This Independent Certifier 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 PA Parties and the Independent Certifier 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 Independent Certifier Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Independent Certifier Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

12.7 Confidentiality

- (a) The Independent Certifier must ensure that:
 - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other

information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and

- (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non-disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

12.8 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.8(b).

12.9 Amendment

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the PA Parties (provided that, in respect of the City, such agreement may be subject to its obligations under a Contribution Agreement and require the consent of a Contribution Agreement Party) and the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent Certifier Agreement.

12.10 Severability

- (a) Each provision of this Independent Certifier Agreement shall be valid and enforceable to the fullest extent permitted by law. If the courts of a competent jurisdiction shall declare any provision of this Independent Certifier Agreement invalid, unenforceable or illegal, 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 Independent Certifier Agreement. If any such provision of this Independent Certifier 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 Independent Certifier Agreement as near as possible to its original intent and effect.

12.11 Enurement

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

12.12 Counterparts

- (a) This Independent Certifier 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 Independent Certifier Agreement which was so faxed.

12.13 Maintenance of Records

- (a) The Independent Certifier shall retain and maintain in safe storage, at its expense, complete and accurate records related to all work performed under this Independent Certifier Agreement (i) for a minimum period of 7 years or such longer period as required by Applicable Law, or (ii) until delivery of such Contract Material to the PA Parties in accordance with Section 10.7(a)(ii), and such records will be made available to the PA Parties and/or Contribution Agreement Parties upon request.

[EXECUTION PAGES IMMEDIATELY FOLLOW]

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

THE CITY OF OTTAWA

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

[EXECUTION PAGE FOR INDEPENDENT CERTIFIER AGREEMENT]

EAST WEST CONNECTORS GP

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have the authority to bind the
partnership

[EXECUTION PAGE FOR INDEPENDENT CERTIFIER AGREEMENT]

[REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name:

Title:

I/We have the authority to bind the
corporation

[EXECUTION PAGE FOR INDEPENDENT CERTIFIER AGREEMENT]

APPENDIX A

CERTIFICATION SERVICES

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall provide the following:

- (a) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a Dispute related to the development of the design.
- (b) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works, including review of the Works Reports.
- (c) Review information relating to Construction Period Quality Failures, Delay Events and Compensation Events.
- (d) Review information relating to Variation Enquiries, DB Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consult with the relevant party.
- (e) In accordance with Section 14.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee.
- (f) In accordance with Section 11.15 of the Project Agreement, determine whether the manner in which DB Co Makes Good any Construction Defects is acceptable.
- (g) In accordance with Section 11.15 of the Project Agreement, identify when it is not expedient for DB Co to correct any Construction Defects, and, where the City and DB Co do not agree on the amount to be deducted from the amount of the Guaranteed Price, being the difference in value between the Works as performed and that called for by the Project Agreement, the Independent Certifier shall determine such amount.
- (h) Review the draft Testing & Commissioning Program and the detailed tests, test methodology and expected test results proposed by DB Co and provide comments, including to report on the effectiveness of the Testing & Commissioning Program, to identify any errors or omissions, and to report any risks.
- (i) Monitor the Commissioning Tests (as indicatively described in Schedule 14 – Testing & Commissioning to the Project Agreement) and other tests, including re-tests, to be performed as set out in the Final Commissioning Program or as otherwise required for DB Co to achieve any Substantial Completion and any Final Completion.
- (j) Monitor and report on, at a minimum on a monthly basis as part of the IC Monthly Report or more regularly as deemed necessary, the requirements, progress and results of all commissioning.
- (k) Prior to any certification, consider the views and comments of both DB Co and the City in relation to the satisfaction of the conditions for certification.

- (l) Conduct and report inspections of the Works as necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement. Report on the observations, findings and potential risks to certification as a result of the regular inspections as part of the IC Monthly Report.
- (m) Review relevant documentation, including the final Design Development Submittals, Construction Document Submittals, design certificates, construction certificates and approvals, Permits, Licences and Approvals, certifications, third party acceptance, shop drawings, site instructions, mock ups, Record Drawings, all quality management plans, sustainability requirements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules (including the Works Schedule) and reports (including the Works Report) provided to the Independent Certifier pursuant to the Project Agreement.
- (n) Monitor the requirements, progress and results of all DB Co Commissioning.
- (o) [Intentionally Deleted].
- (p) Identify any errors or omissions made during the conduct of any such Commissioning Tests referenced in item (i) above and to advise DB Co and City with respect to the implications of those errors and omissions, to the extent that the Independent Certifier may reasonably be aware.
- (q) Upon receipt of notice from DB Co requesting the issuance of the Substantial Completion Certificates or the Final Completion Certificates, as applicable, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (r) Upon notice from DB Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed.
- (s) Prepare, in consultation with DB Co and City, as soon as reasonably practicable and, in any event within, the time period specified in Sections 25.10(e) to 25.10(f) and 25.12A of the Project Agreement, the Minor Deficiencies Lists, and Remaining Works Minor Deficiencies Lists, which Minor Deficiencies Lists and Remaining Works Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies or Remaining Works Minor Deficiencies, as applicable, and a schedule for the completion and rectification of the Minor Deficiencies or Remaining Works Minor Deficiencies, as applicable.
- (t) Certify completion of:
 - (i) Utility Company Self-Performed Works that are the subject of a Request for Utility Works Payment in accordance with Section 11.29 the Project Agreement;

- (ii) Art Cash Allowance Items that are the subject of a Request for Art Payment in accordance with Section 11.30 the Project Agreement; and
 - (iii) Nominated Signalling Subcontractor Works that are the subject of a Request for Nominated Signalling Subcontractor Works Payment in accordance with Section 11.31 the Project Agreement.
- (u) Prior to any Substantial Completion, review DB Co cash allowance expenditures against the installations in respect of the:
 - (i) Utility Company Self-Performed Works and the Utility Company Works Cash Allowance;
 - (ii) Art Cash Allowance Items and the Art Cash Allowance; and
 - (iii) Nominated Signalling Subcontractor Works and the Nominated Signalling Subcontractor Works Cash Allowance.
- (v) After any Substantial Completion, reconcile DB Co invoices for expenditure recovery against City budgets and the Utility Company Works Cash Allowance, Art Cash Allowance, and Nominated Signalling Subcontractor Works Cash Allowance.
- (w) Review and observe installation of all equipment, furniture, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “**Installed Equipment**”) into or onto the Project by the City or any agent or contractor of the City either before or after any Substantial Completion and provide a report to the City and DB Co identifying any damage to the Project which has been caused as a result of the installation of such Installed Equipment into or onto the Project by City, its contractors and/or agents.
- (x) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement.
- (y) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services.
- (z) Provide periodic reports to the PA Parties, as follows:
 - (i) a progress report on the progress of the Works no later than fifteen Business Days following the end of each month of the Construction Period in respect of the previous month or as otherwise agreed by the PA Parties (the “**IC Monthly Report**”); Commencing no less than 180 days prior to each Scheduled Substantial Completion Date, the IC Monthly Report shall contain specific reference to and listing of the work that needs to be done before such Substantial Completion Certificate or Final Completion Certificate can be issued; and,

- (ii) accompanying the IC Monthly Reports delivered for the months of May, August, November and February, a quarterly report (the “**IC Quarterly Report**”) for the quarters ending March 31st, June 30th, September 30th and December 31st respectively, that contains the following information certified in accordance with the standard of care set out in Section 3.3 of the Independent Certifier Agreement:
 - (A) the extent (expressed as a percentage) of completion of the Works as of the last day of the applicable quarter;
 - (B) the value of the Works completed as of the last day of the applicable quarter;
 - (C) the forecasted extent (expressed as a percentage) of completion of the Works as of the last day of the applicable quarter and for the next four quarters; and
 - (D) the forecasted value of the Works anticipated to be completed as of the last day of the applicable quarter and for the next four quarters.
- (aa) Provide the Certification Services with respect to Construction Period Payments set out in Schedule 21 – Construction Period Payments of the Project Agreement including cooperating with PA Parties (including their consultants and advisors) to establish the Earned Value Measurement Techniques to be used in the Certification Services, including review of the measurement methods proposed by DB Co for the purposes of measuring Earned Value, and agreement of any proposed changes to the Credit Rules, in accordance with Appendix E hereto (Attachment F to Schedule 21 of the Project Agreement).
- (bb) Provide advice on other matters that may arise that both PA Parties may jointly require.
- (cc) Review the reports and plans prepared by DB Co, and provide the determinations required from the Independent Certifier, pursuant to Article 13 of the Project Agreement.
- (dd) In implementing the Certification Services, identify any risks that may impede the issuance of a Substantial Completion Certificate or a Final Completion Certificate and inform the PA Parties thereof. Following the identification of any risks, monitor and report to the PA Parties on the progress as part of the IC Monthly Report until such risks are fully resolved.
- (ee) Develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services including timelines, deliverables and a description of the input required from the PA Parties to carry out the Certification Services.
- (ff) Provide written opinions to the City and DB Co as to whether the City acted reasonably in delivering the Proceeding At Risk Notice pursuant to Section 14.6 of the Project Agreement.
- (gg) To the extent not already contemplated in the other Certification Services or otherwise in this Independent Certifier Agreement, review and certify the

determination of eligible costs under the Contribution Agreements to the Contribution Agreement Parties, including:

- (i) conducting a due diligence assessment of the schedule and cash flow forecast and certifying that this schedule and cash flow forecast is achievable, reviewing and certifying that eligible costs are reasonable and meet the eligible cost criteria in a Contribution Agreement, and reviewing and certifying the percentage of a Contribution Agreement Party's eligible costs of the total eligible costs under a Contribution Agreement;
- (ii) reviewing and certifying for each claim by the City under a Contribution Agreement, including interim claims, that all costs are eligible costs and that the work has been constructed and completed in accordance with the terms and conditions of the Contribution Agreement;
- (iii) confirming to the Contribution Agreement Parties that all information provided and/or submitted to the PA Parties and/or the Contribution Agreement Parties in accordance with this Agreement is true and accurate and prepared in good faith to the best of its skill, judgement and knowledge;
- (iv) Executing and delivering certificates in the form attached hereto as Appendix F when requested by the City.

APPENDIX B

INDEPENDENT CERTIFIER FEE

The Fee shall be invoiced by the Independent Certifier to each PA Party in accordance with Section 8 of this Agreement, using invoices in form and substance acceptable to the PA Parties, acting reasonably, on a monthly basis. The total fixed fee for all Certification Services described in Appendix A (other than item (bb) in Appendix A), shall be in the amount of **\$(REDACTED)**, plus HST. Such fixed fee shall not be subject to escalation or adjustment except by Certification Services Variation. Each monthly invoice shall also include, and separately identify, any amounts claimed for services performed pursuant to any Certification Services Variation, and/or Certification Services jointly required by the PA Parties in accordance with item (bb) in Appendix A, for such payment period, and shall set out as a separate line item the HST payable. Each PA Party shall pay its respective portion of the Fee within 30 days of receipt of a complete and valid invoice.

The following hourly rates shall apply for Certification Services jointly required by the PA Parties in accordance with item (bb) in Appendix A, and may apply to Certification Services Variations in accordance with Sections 9.4 and 9.5 of the Independent Certifier Agreement. Hourly rates set out below are all inclusive and include applicable taxes (other than HST), all labour and materials, insurance costs, disbursements (examples: duplicating, delivery and communications) and all other overhead including any fees or other charges required by law. The PA Parties will not reimburse the Independent Certifier for any costs or expenses for hospitality, food or other incidental expenses.

<u>Independent Certifier Personnel</u>	<u>Hourly Rate</u>
Senior Partner	\$(REDACTED)
Electrical QS Partner	\$(REDACTED)
Architectural / Structural QS Partner	\$(REDACTED)
Sr. Construction Specialist	\$(REDACTED)
Engineer	\$(REDACTED)
Mechanical Quantity Surveyor	\$(REDACTED)
Senior Associate	\$(REDACTED)
Associate	\$(REDACTED)
Senior Quantity Surveyor	\$(REDACTED)
Intermediate Quantity Surveyor	\$(REDACTED)
Junior Quantity Surveyor	\$(REDACTED)
Technical Support	\$(REDACTED)

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

The following personnel shall be involved in the performance of the Certification Services:

Name	Position
[REDACTED]	Team Lead
[REDACTED]	Back-up Team Lead
[REDACTED]	Project Manager / Schedule Advisor / Payment Certifier
[REDACTED]	Chief Estimator
[REDACTED]	Lead Electrical & Commissioning
[REDACTED]	Lead Mechanical & Commissioning
[REDACTED]	Back-up Electrical & Commissioning
[REDACTED]	Project Coordinator & Document Control
[REDACTED]	Project Coordinator & Document Control
[REDACTED]	Back-up Mechanical & Commissioning
[REDACTED]	Engineering Advisory and Support
[REDACTED]	Document Control

APPENDIX D

CONDUCT OF CLAIMS

This Appendix D 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 Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**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 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, 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 D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) 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. The Beneficiary shall give such 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 and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both City and DB Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an 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 Independent Certifier Agreement if:
 - (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2);
 - (ii) none of the Indemnifiers notifies 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 each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) none of the Indemnifiers complies in any material respect with Section (3).
- (5) The Beneficiary shall be free at any time to give notice to the applicable 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. For greater certainty, the Independent Certifier acknowledges and agrees that where City is the Beneficiary, City may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice the applicable 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 applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an 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”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to that 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 such 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 D 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 Independent Certifier Agreement.

APPENDIX E

CREDIT RULES

1. CREDIT RULES FOR THE EVALUATION OF EARNED VALUE

1.1 Purpose of Credit Rules

- (a) The Credit Rules set out requirements agreed between the City and DB Co for use and interpretation of the Earned Value Measurement Techniques, pursuant to Schedule 21 of the Project Agreement.

1.2 Change of Credit Rules

- (a) In the event that DB Co or the City propose a change to the Credit Rules, the Independent Certifier may agree to such proposed change to the Credit Rule, provided that:
 - (i) any proposed change to the Credit Rules will result in revised Credit Rules that:
 - (A) continue to meet the Earned Value Measurement Techniques; and
 - (B) follow the principles, guidance, and intent of the Credit Rules set out in this Attachment F, wherever possible;
 - (ii) any proposed change to the Credit Rules is subject to consultation with the City and DB Co at least three months prior to the first Construction Period that uses those revised Credit Rules;
 - (iii) the Independent Certifier considers any responses made by the City and DB Co to a proposed change to the Credit Rules and the Independent Certifier provides a report justifying its decision regarding acceptance or rejection of any proposal to change the Credit Rules; and
 - (iv) prior to the start of the first Construction Period that is to use the revised Credit Rules for the evaluation of Earned Value:
 - (A) the proposed changes to the Credit Rules are agreed to by the Independent Certifier; and
 - (B) both the City and DB Co receive the revised Credit Rules from the Independent Certifier.

1.3 Selection of Measurement Methods

- (a) In principle, when selecting the appropriate measurement methods from the Earned Value Measurement Techniques, the following principles shall be applied:
 - (i) for tangible work or tasks taking three Construction Period Months or more to perform, the measurement methods shall be considered in the following decreasing order of preference:

- (A) firstly, activity completion and physical measurement using the fixed formula 0/100 method; and
- (B) secondly, weighted milestone;
- (ii) for tangible work or tasks taking one or two Construction Period Months to perform, the measurement methods shall be considered in the following decreasing order of preference:
 - (A) activity completion and physical measurement using the fixed formula 0/100 method; and
- (iii) for intangible work or tasks, the measurement methods shall be considered in the following decreasing order of preference:
 - (A) firstly, apportioned effort; and
 - (B) secondly, only where apportioned effort is not possible, level of effort.
- (b) Table 1 sets out the measurement methods that shall be used from the Earned Value Measurement Techniques for specific cost categories, unless there are technical reasons preventing these measurement methods from being used. The specific cost categories in Table 1 are set out in ‘Standard Cost Codes for Capital Projects – Definitions’, US Federal Transportation Administration.

Table 1: Earned Value measurement methods for specific cost categories		
Standard Cost Code	Description	Measurement Method from the Earned Value Measurement Techniques
10	Guideway	
10.01	Guideway: at-grade exclusive right-of-way (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.04	Guideway: aerial structure (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.05	Guideway: Built-up fill	Activity completion and physical measurement using the fixed formula 0/100 method
10.06	Guideway: underground cut & cover (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.07	Guideway: underground tunnel (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.09	Track: Direct fixation	Activity completion and physical measurement using the fixed formula 0/100 method
10.10	Track: Embedded	Activity completion and physical measurement using the fixed formula 0/100 method
10.11	Track: Ballasted	Activity completion and physical measurement using the fixed formula 0/100 method

Table 1: Earned Value measurement methods for specific cost categories		
Standard Cost Code	Description	Measurement Method from the Earned Value Measurement Techniques
10.12	Track: Special (switches, turnouts)	Activity completion and physical measurement using the fixed formula 0/100 method
20	Stations, Stops, Terminals, Intermodals	
20.01	At-grade station; stop; shelter; mall; terminal; platform	Activity completion and physical measurement using the fixed formula 0/100 method
20.03	Underground station; stop; shelter; mall; terminal; platform	Activity completion and physical measurement using the fixed formula 0/100 method
20.05	Joint development	Activity completion and physical measurement using the fixed formula 0/100 method
30	Support Facilities: Yards, Shops and Admin Buildings	
30.01	Administration Building: Office, sales, storage, revenue counting	Activity completion and physical measurement using the fixed formula 0/100 method
30.03	Heavy maintenance facility	Activity completion and physical measurement using the fixed formula 0/100 method
30.05	Yard and Yard Track	Activity completion and physical measurement using the fixed formula 0/100 method
40	Sitework and Special Conditions	
40.01	Demolition; clearing; earthwork	Activity completion and physical measurement using the fixed formula 0/100 method
40.02	Site utilities; utility relocation	Activity completion and physical measurement using the fixed formula 0/100 method
40.03	Hazardous material; contaminated soil mitigation; ground water treatments	Activity completion and physical measurement using the fixed formula 0/100 method
40.04	Environmental mitigation, e.g. wetlands, historic/archeologic, parks	Activity completion and physical measurement using the fixed formula 0/100 method
40.05	Site structures including retaining walls; sound walls and other structures	Activity completion and physical measurement using the fixed formula 0/100 method
40.06	Pedestrian and bike access and accommodation; landscaping	Activity completion and physical measurement using the fixed formula 0/100 method
40.07	Automobile; bus; van access ways including roads; parking lots	Activity completion and physical measurement using the fixed formula 0/100 method
40.08	Temporary facilities	Activity completion and physical measurement using the fixed formula 0/100 method
50	Systems	
50.01	Train control and signals	Activity completion and physical measurement using the fixed formula 0/100 method

Table 1: Earned Value measurement methods for specific cost categories		
Standard Cost Code	Description	Measurement Method from the Earned Value Measurement Techniques
50.02	Traffic signals and crossing protection	Activity completion and physical measurement using the fixed formula 0/100 method
50.03	Traction power supply and substations	Activity completion and physical measurement using the fixed formula 0/100 method
50.04	Traction power distribution and catenary	Activity completion and physical measurement using the fixed formula 0/100 method
50.05	Communications	Activity completion and physical measurement using the fixed formula 0/100 method
50.06	Fare collection system and equipment	Activity completion and physical measurement using the fixed formula 0/100 method
50.07	Central control	Activity completion and physical measurement using the fixed formula 0/100 method
80	Professional Services and Agency Costs	
80.01	Preliminary design	Weighted milestone
80.02	Final design	Weighted milestone
80.03	Project management for design and construction	Apportioned effort
80.04	Construction administration and management	Apportioned effort
80.05	Professional liability and other insurance costs	Weighted milestone
80.06	Legal; permits; review fees by other agencies, cities, etc;	Weighted milestone
80.07	Surveys, testing (quality related), investigation, inspection	Weighted milestone or apportioned effort
80.08	Start up; testing and commissioning	Weighted milestone or apportioned effort

- (c) The measurement methods associated with procurement of materials shall be in accordance with the following principles:
- (i) except as set out in Section 1.3(c)(ii), the costs of materials used in construction shall be included in the cost of each construction task and shall be evaluated for the purposes of Earned Value as part of each construction task using physical measurement; and
 - (ii) the costs of rail and large long-lead equipment manufactured off-site before installation, such as transformers and packaged air conditioning units, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by DB Co to the supplier will not be credited for the purposes of Earned Value until the rail or large equipment manufactured off-site is delivered to the Lands or a bonded warehouse.
- (d) The measurement methods associated with procurement of plant, such as cranes and road vehicles, shall be in accordance with the following principles:

- (i) the costs of plant, such as cranes and road vehicles, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by DB Co to the supplier will not be credited for the purposes of Earned Value until the plant is delivered to the Lands or a bonded warehouse.
- (e) In order to make the measurement of Earned Value more efficient during mobilization, DB Co may choose to identify a tranche of its mobilization cost, the amount of which will be equal to the mobilization cost agreed to between DB Co and the Lenders or Lenders' Consultant of the Cost of the Works that shall be automatically credited for the purposes of measuring Earned Value at Financial Close (the "**Mobilization Credit**"), where:
 - (i) the sum of the costs identified to the Mobilization Credit and the costs identified to the cost codes from Table 1 shall remain equal to the Cost of the Works;
 - (ii) the scope of activity associated with the Mobilization Credit shall be documented by DB Co to the satisfaction of the Independent Certifier before the end of the second Construction Period Month in order to avoid double counting with the Earned Value for activities that are not included within the Mobilization Credit; and
 - (iii) the Earned Value for the activities included within the Mobilization Credit shall be credited as Earned Value without using a measurement method from the Earned Value Management Techniques.

APPENDIX F

CONTRIBUTION AGREEMENT CERTIFICATES

[Federal and Provincial certificates to be appended.]

SCHEDULE 7A
STANDBY LETTER OF CREDIT

[See Attached]

SCHEDULE 7B

(East Warranty Letter of Credit and West Warranty Letter of Credit are attached)

[REDACTED]

EAST WARRANTY LETTER OF CREDIT

Letter of Credit: #[•]

Date: [•]

City of Ottawa
[•]

Attn: [•]

Dear Sirs/Madams:

RE: **Confederation Line Extension**

At the request of our client, [•] (“**DB Co**”), we, [insert name and address of issuing bank], hereby issue in favour of the City of Ottawa (the “**City**”), an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED].

The amount available under this Letter of Credit is payable to the City at any time, and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by an officer of the City certifying that the City is entitled to draw on this Letter of Credit pursuant to Section 11.18 of a project agreement dated [•] (as amended from time to time, the “**Project Agreement**”) and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert expiry date] (the “**Expiry Date**”), and the City may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be extended.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, by courier, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand in accordance with the preceding paragraph.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[•].

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “**UCP**”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit.

Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[NAME OF ISSUING BANK]

By: _____
Name:
Title:

By: _____
Name:
Title:

WEST WARRANTY LETTER OF CREDIT

Letter of Credit: #[•]

Date: [•]

City of Ottawa
[•]

Attn: [•]

Dear Sirs/Madams:

RE: **Confederation Line Extension**

At the request of our client, [•] (“**DB Co**”), we, [insert name and address of issuing bank], hereby issue in favour of the City of Ottawa (the “**City**”), an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED].

The amount available under this Letter of Credit is payable to the City at any time, and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by an officer of the City certifying that the City is entitled to draw on this Letter of Credit pursuant to Section 11.18 of a project agreement dated [•] (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert expiry date] (the “**Expiry Date**”), and the City may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be extended.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, by courier, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand in accordance with the preceding paragraph.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[•].

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “**UCP**”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit.

Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[NAME OF ISSUING BANK]

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE 7C
REMAINING WORKS LETTER OF CREDIT
[REDACTED]

Letter of Credit: #[•]

Date: [•]

City of Ottawa
[•]

Attn: [President and Chief Executive Officer]

Dear Sir/Madam:

RE: Confederation Line Extension

At the request of our client, [•] (“DB Co”), we, [insert name and address of issuing bank], hereby issue in favour of the City of Ottawa (the “City”), as beneficiary, an irrevocable standby letter of credit (the “Letter of Credit”) in the amount of [REDACTED].

The amount available under this Letter of Credit is payable to the City, at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by an officer of the City certifying the City is entitled to draw on this Letter of Credit pursuant to Section 11.18A of a project agreement dated [•] (as amended from time to time, the “Project Agreement”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert expiry date] (the “Expiry Date”), and the City may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be extended.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, by courier, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[•].

It is understood that **[insert name of issuing bank]** is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “**UCP**”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[NAME OF ISSUING BANK]

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE 8

LIST OF DB CO PARTIES

[REDACTED]

SCHEDULE 9

KEY INDIVIDUALS

At Commercial Close, DB Co shall notify the City of the status of the accreditations, including licences, courses and certifications, required to be obtained by the Key Individuals, as defined under the “Qualifications” column in the table below. For those accreditations not yet obtained at Commercial Close, DB Co shall notify the City of the status of such accreditations upon six months after Commercial Close. If such accreditations have not been granted by the applicable licencing or accreditation entities within six months of Commercial Close, the City, at its discretion, may exercise its right in accordance Section 12.4(c) of the Project Agreement to require replacement of the applicable Key Individual with an individual possessing the required accreditations.

A. Key Individuals – Works

Position	Function	Qualifications	Name and Contact Information	Liquidated Damages Amount
DB Co Representative	The DB Co Representative shall have full authority to act on behalf of DB Co, and shall be responsible for overall authority and leadership of DB Co, and all DB Co parties, in accordance with the Project Agreement.	The DB Co Representative shall have a minimum of 10 years’ experience. This shall include executive and P3 experience. *RFQ, Project Executive	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement
Design Build Director	The Design Build Director shall be responsible for ensuring that all activities with respect to the Works are fully integrated with each other.	The Design Build Director shall have a minimum of 15 years’ experience. This shall include design, construction and P3 or Design-Build experience, on projects of similar scope and complexity.	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement

Position	Function	Qualifications	Name and Contact Information	Liquidated Damages Amount
Design Manager	The Design Manager shall be responsible for: (i) coordinating all designs produced by the Design Team; (ii) ensuring the schedule for Design Development Submittals is reflected in each update of the Works Schedule; (iii) coordinating with the City Representative, or its designate, to prioritize the review of each of the Works Submittals, if necessary; and (iv) ensuring obligations set out in Schedule 10 – Review Procedure are fulfilled for each Works Submittal.	The Design Manager shall be a Professional Engineer, with a current license to practice in the Province of Ontario, or obtained within 6 months of Commercial Close. Minimum of 15 years' of design experience. This shall include P3 or Design Build experience on rail projects of similar scope and complexity. *RFQ, Design Manager	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement
Systems Integration Manager	The Systems Integration Manager shall have the responsibilities set out in Schedule 14 – Testing and Commissioning and Schedule 15-2 Part 1.	The LRT Systems Integration Manager shall have a degree in engineering from a recognized university and a minimum of 15 years' experience in systems design, requirements	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement

Position	Function	Qualifications	Name and Contact Information	Liquidated Damages Amount
		traceability, interface capture and management, integration management plan development, systems test plan and procedure development, test program management and systems commissioning. Experience managing and coordinating systems integration activities.		
Testing and Commissioning Coordinator	The Testing and Commissioning Coordinator shall have the responsibilities set out in Schedule 14 – Testing and Commissioning.	The Testing & Commissioning Coordinator shall have a minimum of 10 years' experience in the management and oversight of the testing and commissioning of System Infrastructure of similar scope and complexity.	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement
Utility Work Manager	The Utility Work Manager shall be responsible for all activities required to fulfill DB Co's obligations as set out in Schedule 15-2, Part 2, Article 8 and will act as a single point of contact on all utility related matters.	The Utility Work Manager shall have a minimum of 10 years' experience, in Utility Works on projects of similar scope and complexity. *RFQ, Utility Coordination	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement
Traffic Manager	The Traffic Manager shall have the responsibilities as set	The Traffic Manager shall be a Professional Engineer, with	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the

Position	Function	Qualifications	Name and Contact Information	Liquidated Damages Amount
	out in Article 6.3 of Schedule 15-2 Part 7	a current license to practice in the Province of Ontario, or obtained within 6 months of Commercial Close, with 15 years of traffic engineering experience, of which 10 years' must include experience on projects with similar traffic impact. *RFQ, Traffic Manager		Project Agreement - \$(REDACTED) per day, pursuant to Section 12.4 (b) of the Project Agreement
Design Architect	The Design Architect shall have the responsibilities as set out in Schedule 15-2, Part 4	The Design Architect shall be a licensed Architect, with a current licence issued by the Ontario Association of Architects to practice in the Province of Ontario, or obtained within 6 months of Commercial Close, with a minimum of 15 years' experience designing transit projects of similar scope and complexity and possess Design Build and/or P3 experience.	[REDACTED]	- \$(REDACTED) pursuant to Section 12.4 (a) of the Project Agreement - \$(REDACTED) per day, pursuant to Section 12.4 (b) of the Project Agreement
Lead Architect	The Lead Architect shall have the responsibilities as set out in Schedule 15-2, Part 4	The Lead Architect shall be an Architect, with a current licence issued by the Ontario Association of Architects to practice in the Province of	[REDACTED]	- \$(REDACTED) pursuant to Section 12.4 (a) of the Project Agreement - \$(REDACTED) per day, pursuant to Section 12.4

Position	Function	Qualifications	Name and Contact Information	Liquidated Damages Amount
		Ontario, or obtained within 6 months of Commercial Close, with a minimum of 15 years' experience designing transit projects of similar scope and complexity and possess Design Build and/or P3 experience. *RFQ, Architecture		(b) of the Project Agreement
Environmental Manager	The Environmental Manager(s) shall have the responsibilities set out in Schedule 17 – Environmental Obligations.	The Environmental Manager shall have a degree from a recognized university with specialization in environmental studies and a minimum 15 years' experience, including environmental management, on projects of similar scope and complexity. The Environmental Manager shall have successfully completed, or shall complete within six months or Commercial Close, a recognized ISO 14001 Lead Auditor Course. *RFQ, Managing Systems	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement

Position	Function	Qualifications	Name and Contact Information	Liquidated Damages Amount
		Director (Environmental)		
Director of Communications and Stakeholder Engagement	The Director of Communications and Stakeholder Engagement shall be responsible for all activities required to fulfill DB Co's obligations as set out in Schedule 18 – Communication and Stakeholder Engagement Obligations.	The Director of Communications and Stakeholder Engagement shall have a degree from a recognized university or college in communications, media relations or other relevant speciality, with a minimum of 10 years' experience in communications and stakeholder engagement on transit or transportation construction projects of similar scope and complexity, and is bilingual in Canada's two official languages (English and French). *RFQ, Stakeholder Communications and Public Engagement	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement
Construction Manager	The Construction Manager shall be responsible for all Construction Activities and compliance of Construction Activities with the Project Agreement.	The Construction Manager shall have a degree from a recognized university or college in engineering, management, or other relevant specialty, with a	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project

Position	Function	Qualifications	Name and Contact Information	Liquidated Damages Amount
		minimum of 15 years heavy civil transit orientated construction experience on projects of similar scope and complexity. *RFQ, Construction Manager		Agreement
IMS Director	The IMS Director shall have the responsibilities set out in Schedule 11 – Integrated Management Systems.	The IMS Director shall be a certified QMS 2000 Series Auditor; or at a minimum have successfully completed a recognized ISO 9001, ISO 14001, OHSAS 18001 or OHSAS 45001 Lead Auditor Course; or shall become certified as a QMS 2000 Series Auditor, or shall successfully complete a recognized ISO 9001, ISO 14001, OHSAS 18001, or OHSAS 45001 Lead Auditor Course, within six months of Commercial Close. Minimum of 15 years' experience, including IMS/Quality Management, on projects of similar scope and complexity.	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement

Position	Function	Qualifications	Name and Contact Information	Liquidated Damages Amount
OHS Manager	The OHS Manager shall have the responsibilities set out in Schedule 11 – Integrated Management System	The OHS Manager shall be a Canadian Registered Safety Professional (CRSP) having successfully completed the courses required under the COR program, and an OHSAS 18001 or OHSAS 45001 Lead Auditor course, or shall become a Canadian Registered Safety Professional (CRSP) and complete the courses required under the COR program, and an OHSAS 18001 or OHSAS 45001 Lead Auditor course within six months of Commercial Close. Minimum of 10 years' experience in the development, implementation and audit of an IMS-OHS for projects of similar scope and complexity. *RFQ, Health & Safety	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement
Highway Works Manager	The Highway Works Manager shall have the responsibilities set out in Schedule 15-2 Part	The Highway Works Manager shall be a Professional Engineer, with a	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement

Position	Function	Qualifications	Name and Contact Information	Liquidated Damages Amount
	9.	current license to practice in the Province of Ontario, or obtained within 6 months of Commercial Close, and shall possess a minimum of 15 years' relevant experience, including urban freeway projects of similar scope and size.		- \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement
Safety and Security Certification Manager	The Safety and Security Certification Manager shall have the responsibilities set in Schedule 15-2 Part 1.	The Safety and Security Certification Manager shall have a minimum of 15 years' experience in the development and implementation of SSCP.	[REDACTED]	- \$[REDACTED] pursuant to Section 12.4 (a) of the Project Agreement - \$[REDACTED] per day, pursuant to Section 12.4 (b) of the Project Agreement

SCHEDULE 10

REVIEW PROCEDURE

ARTICLE 1 WORKS SUBMITTALS

1.1 The provisions of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by the Project Agreement, including all Works Submittals listed in Appendices A and B to this Schedule 10, in respect of:

- (a) the East Works to be submitted to, reviewed or otherwise processed by the City in accordance with the Review Procedure prior to East Substantial Completion, or after East Substantial Completion in respect of the completion of East Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto; and
- (b) the West Works to be submitted to, reviewed or otherwise processed by the City in accordance with the Review Procedure prior to West Substantial Completion, or after West Substantial Completion in respect of the completion of West Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto.

(collectively and individually, “Works Submittal” or “Works Submittals” as applicable in this Schedule 10).

1.2 For clarity, the provisions of this Schedule 10, including any deadlines for submission or review set out herein, shall not apply to any processing or review of any Permits, Licences, Approvals and Agreements.

1.3 Subject to Article 1.2, if the City fails to meet the timelines set out in this Schedule 10 with respect to its review of any Submittals, including due to delay caused by the City Design Team, RTG, NCC or MTO, such failure shall be deemed to be a failure by the City to comply with the timelines set out in this Schedule 10.

1.4 In general, Works Submittals shall consist of the following. Specific requirements for each of these Work Submittals are detailed further in Appendices A and B.

- (a) Design Development Submittals:
 - (i) Prior to the preparation of each Pre-Final Design Development Submission, DB Co shall develop a basis of design report for each discipline, based on the Project Agreement and PSOS requirements. The basis of design report shall describe the technical approach planned for the Project as well as the technical requirements, security mitigation and measures to be employed, design codes and parameters to be used;
 - (ii) Pre-Final Design Development (PFDD), which is the stage of design development where the design details of the relevant Works Submittal are established and drawings and specifications for construction have been

developed but are not yet fully finalised;

- (iii) Final Design Development (FDD), which is the stage of design development where the design details of the relevant Works Submittal are finalised and the construction drawings and construction specifications for the designed element are also finalised.
 - (b) Construction Document Submittals;
 - (c) other reports, studies, matrices and plans listed in this Schedule 10 and in Appendices A and B to this Schedule 10;
 - (d) other reports, studies and plans identified in the relevant sections of the Project Agreement; and
 - (e) Works Schedules in accordance with Schedule 12 – Works Scheduling Requirements and as per Article 3.13.
- 1.5 DB Co shall be responsible for determining any and all necessary Works Submittals, as specified in the relevant sections of the Project Agreement.
- 1.6 Other reports, studies and plans shall be submitted as follows:
- (a) DB Co shall be responsible for determining the timing of the preparation of reports, studies and plans required in the preparation of the PFDD, FDD and Construction Document Submittals, unless timing of these reports, studies and plans are identified in this Schedule 10 or in other relevant sections of the Project Agreement. DB Co shall include the timing and submission sequence of all reports, studies and plans which will inform the Design Development Submittals in the schedule of Works Submittals pursuant to Section 11.2(b)(vi) of the Project Agreement. DB Co shall prepare a minimum of one hard copy and one electronic upload of submissions of reports, studies and plans for review by the City as follows:
 - (i) Draft format; and
 - (ii) Final format (signed and sealed).
 - (b) DB Co shall be responsible for preparing and submitting additional updated submissions of reports, studies and plans, if the validity of such is altered due to design changes or if more frequent submissions are identified in this Schedule 10 or in other relevant sections of the Project Agreement.
- 1.7 Compliance Verification & Validation Matrix:
- (a) DB Co shall use the Requirements Management tool to report on compliance with the Output Specifications and other requirements in the form of a Compliance Verification & Validation Matrix. The Compliance Verification & Validation Matrix shall provide line-by-line reporting of all applicable requirements and provide full traceability between requirements and compliance demonstration, including preliminary and final design references, quality assurance & control, testing &

commissioning (including but not limited to FAT, PICO, SAT, SIT, and system-wide testing); and

- (b) DB Co shall submit the Compliance Verification & Validation Matrix in accordance with this Schedule 10 as part of the Basis for Design submittal, at the Pre-Final Design Development stage, the Final Design Development stage, after system-wide testing, prior to trial running and at final completion.

1.8 Design review workshops

- (a) DB Co shall schedule and coordinate design review workshops in advance of issuing Pre-Final Design Development Submittals;
- (b) The DB Co Representative shall arrange the design review workshops in consultation with the City Representative;
- (c) The Parties shall cooperate to develop a reasonable schedule for the design review workshops and shall incorporate such schedule into the Current PBS;
- (d) DB Co shall circulate to the City Representative an agenda for each of the design review workshops no later than 5 Business Days prior to the relevant design review workshop;
- (e) The design review workshops shall be held in person in the City of Ottawa, Ontario, except where otherwise agreed by the Parties, acting reasonably; and
- (f) In advance of a design review workshop, DB Co may submit to the City Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform the City on the development of New City Infrastructure and New MTO Infrastructure design and provide an opportunity for dialog on compliance with the requirements of the Project Agreement. For greater certainty, interim submissions shall be informal and shall not be reviewed in accordance with Schedule 10 - Review Procedure.

1.9 Design working groups

- (a) In order to discuss and obtain input to the design development, DB Co and the Design Team shall hold design working groups with the City and the City Design Team upon the following terms:
 - (i) DB Co shall propose, in consultation with the City Representative, a logical breakdown of design disciplines or submittals that should each be the subject of individual monthly or biweekly design working groups as mutually agreed;
 - (ii) the City and DB Co shall mutually agree if multiple design disciplines or submittals should be discussed in a particular design working group to benefit a wholesome discussion on overlapping design matters;

- (iii) each design working group shall be held monthly or biweekly, in the City of Ottawa, unless the City agrees otherwise in writing;
- (iv) the Parties shall cooperate to develop a reasonable schedule for the design working groups and shall incorporate such schedule into the Current PBS;
- (v) DB Co shall circulate to the City and the City Design Team an agenda for each of the design working groups no later than 10 Business Days prior to the relevant design working groups held on a monthly basis and 5 Business Days for prior to the relevant design working groups held on a biweekly basis;
- (vi) in advance of a design working groups, DB Co may submit to the City Design Team any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform the City on the development of New City Infrastructure and New MTO Infrastructure design and provide an opportunity for dialog on compliance with the requirements of the Project Agreement. For clarity, these submissions shall be informal and shall not be reviewed in accordance with Schedule 10 - Review Procedure;
- (vii) the design working groups shall be held in person, with attendance from the relevant DB Co and City subject matter experts, except where otherwise agreed by the Parties, acting reasonably;
- (viii) DB Co shall maintain minutes of the design working groups and, within 5 Business Days after each design working group, DB Co shall provide to the City and the City Design Team a copy of the minutes, together with a copy of any notes, drawings, or diagrams relevant to the design working group; and
- (ix) the City and DB Co agree that the subject matter of the design working groups shall not be regarded as Submittals to which Schedule 10 - Review Procedure applies, and that the City shall not be bound by the input provided in connection with the design working group.

ARTICLE 2 SCHEDULE FOR WORKS SUBMITTALS

- 2.1 DB Co shall schedule the Review Procedure Activities, including the submission dates for all Works Submittals and the City review period in accordance with this Schedule 10.
- 2.2 The Works Schedule and any amendment to the Works Schedule shall allow:
 - (a) a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for the City's review of and response to each Works Submittal for all Works;
 - (b) a period of 20 Business Days (or such longer period as the Parties may agree) from the date of receipt for the City's review of and response to each Works Submittal

containing elements of the Works to be constructed within or adjacent to NCC Lands. Refer to the Lands Table in Schedule 20 – Lands for the extent of these Lands; or

- (c) a period of 20 Business Days (or such longer period as the Parties may agree) from the date of receipt for the City's review of and response to each Works Submittal containing elements of New MTO Infrastructure,

which period of time may be subject to adjustment, as agreed upon with the City.

- 2.3 DB Co shall submit all Works Submittals no later than the dates identified in the Current PBS, as defined in Schedule 12 – Works Scheduling Requirements. The City Representative shall review and respond to each Works Submittal in accordance with the review periods set forth in Article 2.2 of this Schedule 10 – Review Procedure or as otherwise agreed to between the Parties.

- 2.4 If, at any time:

- (a) a Revised PBS is under review by the City, then the City shall be afforded an additional period of time, not to exceed an additional ten Business Days, for processing such Works Submittals;
- (b) DB Co submits a volume of Works Submittals not contemplated by the Current PBS, then the City Representative shall, within five Business Days of receipt of such Works Submittal or Works Submittals, provide DB Co with a reasonable estimate of the time necessary for processing such Works Submittal or Works Submittals which estimate DB Co shall take into account for the purposes of Schedule 12 – Works Scheduling Requirements; or
- (c) a Works Submittal was, or Works Submittals were, received for review later than indicated in the Current PBS, such that the City Representative cannot review the Works Submittal or Works Submittals within the time permitted in the Current PBS, then the City shall be afforded an additional period of time, not to exceed an additional five Business Days, for processing such Works Submittals.

- 2.5 Documentation or data that has been submitted, deemed compliant, and service proven for the Existing Confederation Line may be reused and shall be resubmitted for the purposes of the Confederation Line Extension project, and will be considered compliant, except for such changes as may be necessary to satisfy the requirements of the Confederation Line Extension.

ARTICLE 3 GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

- 3.1 Unless otherwise specified by the City Representative, DB Co shall issue all Works Submittals to the City in the format described in Appendices A and B, and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2 DB Co shall be responsible for creating and maintaining an Electronic Data Management System (EDMS), as a tracking log to monitor, as a minimum, the approval of submittals and the resolution of comments. This system shall:

- (a) be used as a repository for all electronic submittal uploads and document control;
 - (b) be in place and operational within 30 days after Financial Close;
 - (c) be deemed reasonably acceptable to the City prior to implementation;
 - (d) follow the City IT policy and address cyber security issues with supporting mitigation;
 - (e) as a minimum comprise the following:
 - (i) a cloud-based single platform, compatible with City technology security policies for cloud storage, which provides an easily configurable solution;
 - (ii) user group security and restricted authorization function;
 - (iii) browsing by project, folder or file name with drag and drop function;
 - (iv) collaboration functions with the ability to electronically approve and stamp documents;
 - (v) text searchable functions for PDF and native files;
 - (vi) seamless integration;
 - (vii) audit trail;
 - (viii) pre-defined workflow & quality management systems;
 - (ix) read-only, real-time access for the City Representative and their nominated personnel;
 - (x) version control and notification capability;
 - (xi) analytics and reporting function; and
 - (xii) a review function with customizable mark-up tools.
 - (f) undergo routine system shutdowns and/or maintenance outside working hours, if necessary;
- 3.3 DB Co shall, at its own cost and risk, compile and maintain a Review Procedure Activities Register, to be uploaded to the EDMS as detailed in Appendix A, to track the status of each Works Submittal through every stage of preparation, submission, and review by the City, and approval by the applicable third party. DB Co shall submit documentation on the proposed design, functionality, and usage of the Review Procedure Activities Register to the City Representative in accordance with Schedule 10 – Review Procedure no later than Financial Close. The Review Procedure Activities Register shall:
- (a) be updated on a daily basis by DB Co and be accessible in real time by the City, any

- other entity as requested by the City and DB Co, through the EDMS, unless otherwise permitted by the City;
- (b) be operational no later than 30 days after Financial Close;
 - (c) include identification of the following:
 - (i) the submittal date and contents of all Works Submittals;
 - (ii) the date of receipt and content of all returned Works Submittals;
 - (iii) status of comments on all Work Submittals in accordance with Article 4.1;
 - (iv) vulnerability or security breaches;
 - (v) tracking ID's (in a format reasonably acceptable to the City) supporting the requirements of Article 3.8.
 - (d) include a tracking log to monitor the resolution of comments.
- 3.4 All Works Submittals shall be in English.
- 3.5 All Works Submittals required by the Project Agreement and/or by Applicable Law to be signed or sealed by persons with professional designations, registered in the Province of Ontario (including, where applicable, by registered professional engineers, professional geoscientists, architects or landscape architects) shall be so signed and sealed, unless the Works Submittal is being submitted in Draft format in accordance with Article 1.6(a)(i) of this Schedule 10, or as an Interim submission in accordance with Article 1.8(f) of this Schedule 10.
- 3.6 All Works Submittals shall:
- (a) include copies of all documents to be reviewed;
 - (b) be uploaded to the EDMS and include an electronic file-naming convention reasonably acceptable to the City; and
 - (c) clearly identify the purpose of the Works Submittal, DB Co's proposed course of action relating to the Works Submittal and the Project Operations that are the subject of the Works Submittal.
- 3.7 All Works Submittals shall, where applicable, refer to and be in accordance with the relevant provisions of the Output Specifications, any other applicable Schedule to the Project Agreement, and to any Design Data that has previously been subject to review.
- 3.8 Each Works Submittal shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include:
- (a) a summary table which lists all revisions or changes from previous Works Submittals; and

- (b) a list of all attached Works Submittals and for each Works Submittal;
 - (i) identification of whether the Works Submittal contains System Infrastructure, New Municipal Infrastructure, New MTO Infrastructure, and elements of Works on or adjacent to NCC Lands.
 - (ii) the document number(s) or drawing number(s);
 - (iii) revision numbers (if applicable);
 - (iv) document or drawing title(s);
 - (v) name of entity that prepared the Works Submittal;
 - (vi) name and signature of the Design Manager and other Key Individual(s) responsible for content of the Works Submittal;
 - (vii) quality control documentation in accordance with Schedule 11 – Integrated Management System Requirements;
 - (viii) the Works Submittal history, including reviewer and checker initials, date and delivery information, log number of all previous submissions of that Works Submittal, Project Agreement provisions, comments from reviewers from the previous Works Submittal, all outstanding comments, and responses to addressing those comments, all submitted in a format reasonably acceptable to the City; and
 - (ix) identification of any previous Works Submittal superseded by the current Works Submittal.
- 3.9 To facilitate the City’s distribution of Works Submittals to the NCC and the MTO, all Works Submittals that are to be reviewed by the NCC, or MTO shall be separated accordingly and submitted individually.
- 3.10 Each Works Submittal shall be organized into relevant sections. Each Work Submittal shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. All Works Submittals shall include, without limitation, copies of all final approvals, design reports, correspondence and calculations, in both electronic and hard copy.
- 3.11 [Not used].
- 3.12 Issued For Construction Works Submittals
 - (a) Construction Document Submittals submitted in accordance with this Schedule 10 – Review Procedure and assigned comments “NO COMMENT” or “MINOR COMMENT” with all of the comments resolved, shall become Issued For Construction and DB Co shall stamp them as “Issued For Construction”. Works Submittals used for the construction of any part or parts of the Project prior to being entitled to proceed, as noted above, shall not be stamped as Issued For Construction.

- (b) DB Co shall submit copies of all drawings that are Issued For Construction, together with manuals and instructions, to the City Representative and to the Independent Certifier.
- (c) Major revisions to Issued For Construction documents shall be submitted for review as Construction Document Submittals, being stamped “Issued For Construction” upon being entitled to proceed in accordance with this Section 10 – Review Procedure. For minor revisions to Issued For Construction documents, DB Co shall notify the City (which notice shall include appropriate drawings/revisions) but is not required to submit re-issued plans or reports, provided the City reserves the right to treat minor revisions as a major revision and require submission at any time several minor revisions have been made, or if the City determines in its sole discretion that a minor revision is a major revision. Issued For Construction documents are required for the certification of construction detailed in Appendices A and B of this Schedule 10.
- (d) In the case of artwork supply and fabrication, DB Co shall, prior to issuance, submit all related tender packages for review of compliance by the City.

3.13 Works Schedule Re-baseline Submittals

- (a) DB Co shall prepare Works Schedules re-baselines in accordance with Schedule 12 – Works Scheduling Requirements. DB Co shall submit the Works Schedules re-baselines for review in accordance with this Schedule 10.
- (b) All non-draft submissions shall include DB Co Representative’s dated signature on the front cover of each document.
- (c) All Works Schedules submitted to the City shall be submitted in two electronic file formats. The first format shall be in the native file format of the software used to generate and manage the Works Schedules, which shall be the exported .XER file for the latest version of Primavera Professional Project Management (PPM). The second format shall be a word-searchable high resolution colour PDF version. Upon City’s request, DB Co shall provide the details of the software and any additional software plug-ins used by DB Co, a copy of any templates, and the details for any software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable the City to replicate the Works Schedules submitted by DB Co using the native file formats provided by DB Co.
- (d) At each submission, DB Co shall provide at least two hardcopies of the PBS printed in colour in a reasonable scale and on an appropriate paper size. DB Co shall submit one .XER file used to generate the Works Schedule re-baseline and the resultant PDF.
- (e) All tabular information including numerical data or calculations shall be submitted in two electronic file formats. The first format shall be in the Microsoft Excel file format that would allow the City to review formulas and manipulate the data for the purpose of evaluation and the second format shall be a high resolution PDF version.

- (f) The filename of each of the electronic files submitted shall indicate the project name acronym, schedule type, revision number and the schedule status date in the format ‘YYYYMMDD’ - e.g. PBS-4 for Confederation Line East shall be named “CLE PBS-4 – 20180731”.
- (g) The requirements of Article 4 shall apply to all PBS Submittals.

ARTICLE 4 COMMENTS

- 4.1 The City Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Article 2.2. The City Representative shall return Works Submittals to DB Co with a copy to the Independent Certifier and assign one of the following four comments:
 - (a) “NO COMMENT”;
 - (b) “MINOR COMMENT”;
 - (c) “MAJOR COMMENT”; or
 - (d) “CRITICAL COMMENT”.
- 4.2 The comment “NO COMMENT” will be assigned to those Works Submittals that, in the opinion of the City Representative, generally conform to the requirements of the Project Agreement, recognising the degree of design development. DB Co shall comply with and implement such Works Submittals.
- 4.3 The comment “MINOR COMMENT” will be assigned to those Works Submittals that, in the opinion of the City Representative, generally conform to the requirements of the Project Agreement, recognising the degree of design development, but in which non-material deficiencies have been found by the City Representative’s review. DB Co shall correct these Works Submittals in the submission immediately subsequent, and shall comply with and implement such Works Submittals after correction, including in accordance with the comments. If the City Representative assigns to a Works Submittal the additional comment “RE-SUBMIT”, then,
 - (a) DB Co shall correct and re-submit such Works Submittal, in its entirety and at its own cost, to the City Representative no later than 20 Business Days after the comment has been provided to DB Co, or as agreed between DB Co and the City Representative and as set out in writing.
 - (b) If at any time it is discovered that DB Co has not corrected the deficiencies on Works Submittals stamped “MINOR COMMENT”, then DB Co will be required to modify the Works Submittals and Project Operations as required to ensure that the Works comply with the Output Specifications, any other applicable Schedule to the Project Agreement, and the DB Co Proposal Extracts and DB Co may be required, at the City Representative’s discretion, to resubmit the relevant Works Submittals.
 - (c) In such circumstances the City Representative shall act promptly in considering

whether such deficiencies have been corrected. At the City Representative's discretion, comments addressed as "MINOR COMMENT" that have not been addressed in the subsequent submission may be escalated to "MAJOR COMMENT" or "CRITICAL COMMENT".

- (d) No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.4 The comment "MAJOR COMMENT" or "CRITICAL COMMENT" will be assigned to those Works Submittals that, in the opinion of the City Representative, contain significant deficiencies or do not generally conform to the requirements of the Project Agreement, including this Schedule 10.
- (a) DB Co shall correct and re-submit these Works Submittals within 20 Business Days after the comment has been provided to DB Co, or such other time period, as agreed between DB Co and the City Representative and as set out in writing.
 - (b) The City Representative will then review such re-submitted Works Submittals and assign a comment to the corrected Works Submittal. The Works Submittals shall be corrected, revised and resubmitted, in their entirety, as often as may be required to obtain a comment that permits DB Co to proceed.
 - (c) No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Works Submittal with a "CRITICAL COMMENT" comment will be a Proceeding At Risk Matter in accordance with Section 14.6(a) of the Project Agreement.
- 4.5 Where the City Representative issues the comment "MINOR COMMENT", "MAJOR COMMENT" or "CRITICAL COMMENT", the City Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of the Project Agreement that the Works Submittal fails to satisfy. DB Co shall schedule a meeting between the DB Co Representative and the City Representative to discuss the resolution of "MAJOR COMMENT" and "CRITICAL COMMENT" comments. At the City Representative's discretion, a meeting may be requested to resolve "MINOR COMMENT" comments. The City Representative shall not address the following in their comments:
- (a) spelling and/or grammar unless the design intent could be misinterpreted through such matters; and
 - (b) personal preferences regarding (i) design approach, (ii) construction methodology and/or (iii) selection of materials.
- 4.6 If, at any time after assigning any comment to a Works Submittal, the City Representative or DB Co discovers any significant deficiencies or any failure to conform to the requirements of the Project Agreement, the City Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Article 5 of this Schedule that the revised comment is correct, DB Co shall make all such corrections to the Works Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 4.7 For the purpose of facilitating and expediting the review and correction of Works Submittals, the City Representative and the DB Co Representative shall meet, as may be mutually agreed, to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8 Where a Works Submittal is voluminous, the City Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to DB Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to DB Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by the City.
- 4.9 In lieu of returning a Works Submittal, the City Representative may, by letter, notify DB Co of the comment assigned to the Works Submittal and if such comment is “MINOR COMMENT”, “MAJOR COMMENT” or “CRITICAL COMMENT”, then the notification shall contain comments in sufficient detail for DB Co to identify the correction sought.
- 4.10 At the City Representative’s discretion, DB Co may be requested to attend a meeting to discuss the resolution of any unresolved comments.

ARTICLE 5 DISPUTES

- 5.1 If DB Co disputes any act of the City or the City Representative in respect of a Works Submittal under this Schedule 10, DB Co shall promptly notify the City Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why DB Co believes a different comment should be assigned, together with appropriate supporting documentation. The City Representative shall review the Works Submittal, the reasons and supporting documentation and within five Business Days after receipt thereof shall either confirm the original comment or notify DB Co of a revised comment. If the City Representative confirms the original comment, DB Co may request that the Independent Certifier resolve the Dispute and render a decision within five Business Days of such request.
- 5.2 If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Article 10.2, either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.
- 5.3 Notwithstanding the provisions of Articles 5.1 and 5.2, the City Representative may direct that DB Co revise the Works Submittals in accordance with the comments of the City Representative and proceed to perform and complete the Works on the basis of such revised Works Submittals. For clarity, such direction shall be considered a Dispute and DB Co may proceed in accordance with this Article 5 and Schedule 27 – Dispute Resolution Procedure.

ARTICLE 6 EFFECT OF REVIEW

- 6.1 Subject to Section 11.1(j) of the Project Agreement, any review and comment by the City or the City Representative of any Works Submittals are for general conformity to the obligations and requirements of the Project Agreement, and any such review and comment shall not relieve DB Co of the risk and responsibility for the Project Operations and for meeting all of DB Co’s obligations under and requirements of the Project Agreement, and shall not create any new or additional obligations or liabilities for the City. Without limiting the generality of

the foregoing, any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit DB Co's obligations or liabilities in respect of the Works under the Project Agreement or exclude or limit the City's rights in respect of the Works under the Project Agreement.

ARTICLE 7 WORKS SUBMITTAL EXPLANATION

- 7.1 At any time, the City Representative may, acting reasonably, require DB Co or any DB Co Parties, including DB Co's consultants and any other relevant personnel, at no additional cost to the City, to explain to the City Representative and the City advisors the intent of DB Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications or any other Schedule to the Project Agreement, as applicable. DB Co shall provide the explanation to the City Representative within five Business Days (or such longer period as the Parties may agree) from the date of receipt of the request from the City Representative.

ARTICLE 8 REVISIONS

- 8.1 DB Co shall ensure that each Works Submittal keeps the same unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.
- 8.2 Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing. Drawings produced during Design Development shall be exempt from requirements in Article 8.2.
- 8.3 All revisions must be able to be integrated into the As-built Drawings and the Record Drawings.
- 8.4 DB Co shall keep all Design Data current. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.
- 8.5 [Not Used]

ARTICLE 9 AUDIT BY THE CITY REPRESENTATIVE

- 9.1 Without limiting any other right under the Project Agreement, the City Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.

- 9.2 If during an audit or at any other time it is discovered by the City or DB Co (or resolved pursuant to Article 9.3) that any Works Submittals were not correctly implemented, DB Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Project Operations to which they relate and shall advise the City Representative of all such corrections and modifications.
- 9.3 Any Dispute concerning the implementation of a Works Submittal, subject to Article 5.1, shall be referred in the first instance to the Independent Certifier for resolution.

ARTICLE 10 VARIATIONS

- 10.1 [Not used].
- 10.2 If, having received comments from the City Representative on any Works Submittal, DB Co considers that compliance with those comments would amount to a Variation, DB Co shall, within ten (10) Business Days of receipt of and before complying with the comments, provide written Notice to the City of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, the City may, at their election, issue a Variation Enquiry (which shall be dealt with in accordance with Schedule 22 - Variation Procedure) or amend their comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with, either party may proceed to resolve the matter in accordance with Article 5.3, including for clarity, the exercise by the City of their rights under Article 5.3. Subject to the foregoing sentence, any failure by DB Co to notify the City in accordance with this Article 10.2 that DB Co considers that compliance with any comments of the City Representative would amount to a Variation shall constitute an irrevocable acceptance by DB Co that any compliance with the City Representative's comments shall be without cost to the City and without any extension of time.

ARTICLE 11 GENERAL

- 11.1 Any capitalized terms used in the appendices to this Schedule 10 – Review Procedure, that are not defined in this Schedule 10 – Review Procedure or in Schedule 1 – Definitions and Interpretation, shall have the meanings given to them in Schedule 15-1 – Technical Terms and Reference Documents.

ARTICLE 12 COMPLIANCE WITH MTO MINIMUM DESIGN AND CONSTRUCTION CERTIFICATION REQUIREMENTS

- 12.1 In respect of the New MTO Infrastructure, DB Co shall comply with all of the obligations set forth in Appendix B.

APPENDIX A – MINIMUM WORKS SUBMITTAL REQUIREMENTS

ARTICLE 1 FORMAT FOR WORKS SUBMITTALS

1.1 All Works Submittals shall be submitted to the City in hardcopy and electronic format as follows:

- (a) Hardcopy requirements:
 - (i) one set of all Work Submittals shall be submitted in reduced format drawings (11” x 17”) and design briefs; and
 - (ii) one set of Works Submittals which are not drawings shall be submitted in 8.5” x 11” format, unless otherwise specified.
- (b) Electronic copy requirements:
 - (i) an electronic copy in the format set out in this Appendix A, together with its native file in standard format, or as prescribed by the City acting reasonably;
 - (ii) CAD drawings shall be provided in accordance with the City of Ottawa’s CADD Standards Manual, or otherwise in accordance with MTO CADD standards, for New MTO Infrastructure. DB shall confirm drawing conventions and standards, including AutoCAD and InRoads standards, title block and stationing convention, with the City prior to commencing design drawing production; and
- (c) All Works Submittals (or as otherwise agreed upon by the Parties) shall be uploaded to the EDMS. All other Submittals not otherwise specified shall be uploaded to the EDMS.

ARTICLE 2 SUBMITTALS

- 2.1 The following is a detailed list of the Works Submittals that DB Co is required to provide to the City for review and comment in accordance with this Schedule 10.
 - 2.2 Additional Works Submittals may be requested by the City Representative at any time in order to understand the Works, and DB Co shall be required to provide same to the City for review in accordance with this Schedule 10. A description of the minimum content of each Work Submittal provided is set out in the following sections.
 - 2.3 Works Submittal deliverables which are applicable to satisfying the requirements of multiple Works Submittal sections are permitted to be
-

reused, granted they meet all the requirements of each Works Submittal section they are applied to.

2.4 Submission Requirements

(a) The Works Submittal Requirements are detailed in the tables below.

[REDACTED]

ATTACHMENT 1

Sample Design Certificates

Certificate Ref No. []

DESIGN CERTIFICATE (GENERAL)

In respect of :

(Provide submittal details)

Project Agreement between the City and DB Co dated XX XX, XXXX (“the Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Design Team for certifying the design of the Works to the extent that such Works components have been constructed, installed, altered, upgraded, and/or augmented, in accordance with Schedule 15-2 – Design and Construction Requirements.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.
2. We certify that we have prepared the Design Data for [.....] listed in the Schedule hereto in accordance with all applicable requirements contained in the Design Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - a. complies with all applicable Output Specifications, as amended by the following:
 - (i) **[List, if any, the changes made by the issue of Variation(s)];**
 - b. complies with all applicable design requirements of the Project Agreement;

- c. complies with all applicable standards, codes and current Good Industry Practice; and
- d. accurately describes and depicts the Works to be undertaken.

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Certified by:

Design Team (representative)

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

Signed:

Construction Contractor representative

Name:

Date:

This Certificate is:

- i. reviewed*
- ii. reviewed as noted as follows*
- iii. returned marked “rejected” as follows.*

* delete as appropriate

Signed:

City Representative

Name:

Date:

Certificate Ref No. []

DESIGN CERTIFICATE (ENVIRONMENTAL)

In respect of :

(Provide submittal details)

Project Agreement between the City and DB Co dated XX XX, XXXX (“the Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.

Form of certificate to be used by the Design Team and the Environmental Director for certifying the design of environmental works incorporated in the Works in accordance with the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.
2. We certify that we have prepared the Design Data for [.....] [Name and list of all elements of the environmental works] in the Schedule hereto in accordance with all applicable requirements contained in the Design Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion:
 - a) the said Design Data complies with all applicable Output Specifications, including Technical Appraisal Form No. [.....] dated [.....], as amended by the following:
 - i) **[List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];**
 - b) the said Design Data complies with all applicable design requirements of the Project Agreement;
 - c) the said Design Data complies with all applicable standards, codes, environmental permits licences approvals and authorizations, and current Good Industry Practice; and
 - d) the said Design Data accurately describes and depicts the Works to be undertaken.

SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

Certified by:

Design Team (representative)

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

Signed:

Environmental Director

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

This Design Certificate is:

- i. reviewed*
- ii. reviewed as noted as follows*
- iii. returned marked “rejected” as follows.*

* delete as appropriate

Signed:

City Representative

Name:

Date:

ATTACHMENT 2

Sample Construction Certificate

Certificate Ref. No. []

CONSTRUCTION CERTIFICATE

In respect of :

(Provide submittal details)

Project Agreement between the City and DB Co dated XX XX, XXXX (“the Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Design Team for certifying, as applicable:

- a) the substantial completion of construction activities in respect of those components of the [East][West] Works set out in paragraph 1 of this Construction Certificate;
- b) the Total Completion of construction activities in respect of the [East][West] Works, including Minor Deficiencies; or
- c) the total completion of construction activities in respect of any Reinstatement Work carried out by the Construction Contractor pursuant to Section 30 **[Damage and Destruction]** in accordance with a Reinstatement Plan.

in accordance with Schedule 15-2 – Design and Construction Requirements.

Construction Contractor’s Statement

We certify that **[name and element of the Works in respect of the [East][West] Substantial Completion Certificate][the Works in respect of the [East][West] Final Completion Certificate][the [East][West] Works in respect of the Final Completion Certificate**

(Reinstatement Work)] has been designed, constructed, **[substantially completed], [totally completed],** commissioned and tested in all respects in accordance with: **[Note to Proponents: Inapplicable language to be deleted.]**

- a) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
- b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):

(i) **[List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];**

Signed.....

Construction Contractor representative

Name.....

Date.....

Design Team's Statement

1. We certify that we have examined the [name and element of the [East][West] Works in respect of the [East][West] Substantial Completion Certificate][the [East][West] Works in respect of the [East][West] Final Completion Certificate][the [East][West] Works in respect of the Final Completion Certificate (Reinstatement Work)] in accordance with the requirements for examination of the Works contained in the Design Management Plan and the Construction Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such

examinations, and that in our professional opinion [the said element of the [East][West] Works][the [East][West] Works] has been designed, constructed, [substantially completed][totally completed], commissioned and tested in accordance with: **[Note to Proponents: Inapplicable language to be deleted.]**

(a) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and

(b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):

[List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];

Signed.....

Design Team (representative)

Name.....

Title.....

Date.....

Professional Registration Number:

Affix Professional Seal

Receipt of this Certificate is acknowledged.

Signed.....

Independent Certifier

Name.....

Date.....

Professional Registration Number:

Affix Professional Seal

This Certificate is:

- i. reviewed*
- ii. reviewed as noted as follows*
- iii. returned marked “rejected” as follows.*

* delete as appropriate

Signed:

City Representative

Name:

Date:

APPENDIX B

MINIMUM DESIGN AND CONSTRUCTION

SUBMITTAL AND CERTIFICATION REQUIREMENTS FOR NEW MTO INFRASTRUCTURE

1. DEFINITIONS

- 1.1 “**Appropriate Person**” has the meaning given in Article 3.1 (b) (iii)
- 1.2 “**Bluetooth Reader**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 – Highway Works.
- 1.3 “**Checking Team**” has the meaning given in Article 2.9 of Part A of Schedule 15-2, Part 9 – Highway Works.
- 1.4 “**Deck**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.5 “**Design Criteria**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.6 “**Design Manager**” has the meaning given in Schedule 9 – Key Individuals.
- 1.7 “**Foundation**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.8 “**Handover**” means, as applicable, the successful handover, by DB Co of, the New MTO Infrastructure, or a component thereof, to City or, where Notice of Delegation has been provided by City in respect of New MTO Infrastructure, to MTO, in accordance with Section 25.16 of the Project Agreement including, for clarity, the receipt of City’s or MTO’s (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to the City in accordance with Section 25.16(g) of the Project Agreement.
- 1.9 “**Highway**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.10 “**Independent Checking Team**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.11 “**Independent Structural Design Check Certificate**” means the form provided as Attachment 4 to this Appendix B.
- 1.12 “**MTO Design Management Plan**” has the meaning given in Section 2.1(a) of this Appendix B.

- 1.13** “**Overhead Sign Support Structure**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.14** “**Pavement**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.15** “**Pavement Markings**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.16** “**Regulatory Sign**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.17** “**Retaining Wall**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.18** “**Roads**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.19** “**Road Safety Audit**” has the meaning given in Article 10 of Part B of Schedule 15-2, Part 9 - Highway Works.
- 1.20** “**Road Safety Audit Certificate**” has the meaning given in Article 10.8(a) of Part B of Schedule 15-2, Part 9 - Highway Works.
- 1.21** “**Significant and Complex Structures**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.22** “**Structure**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.23** “**Substructure**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.24** “**Superstructure**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.25** “**Technical Appraisal Form**” or “**TAF**” means a form substantially in the format attached as Attachment 1 - Sample Contents for a Structural TAF to Appendix B of Schedule 10 - Review Procedure.
- 1.26** “**Temporary Works**” means works that are performed to serve a specific temporary function in the execution of the Works and in respect of which any resulting infrastructure is removed at such time when its temporary use is no longer required”
- 1.27** “**VDS**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.
- 1.28** “**VMS**” has the meaning given in Article 1.6 of Part A of Schedule 15-2, Part 9 - Highway Works.

2. MTO DESIGN MANAGEMENT PLAN AND TECHNICAL APPRAISAL FORMS

2.1 Submission of MTO Design Management Plan

- (a) Within 90 days following Financial Close, DB Co shall submit a Design Management Plan in respect of New MTO Infrastructure (the “**MTO Design Management Plan**”) to the City in accordance with Schedule 10 - Review Procedure. The MTO Design Management Plan shall include:
 - (i) the organization chart, including the Design Manager and Highway Works Manager, for all design activities;
 - (ii) the procedures to be used for designing and checking each of the designs;
 - (iii) the identification of the Checking Team and Independent Checking Team;
 - (iv) the contents and format of Design Development Submittals, as well as the Construction Document Submittals;
 - (v) a design review and audit schedule, indicating dates that DB Co plans to:
 - (A) conduct internal audits of the design verification process;
 - (B) submit Design Development Submittals and Construction Document Submittals; and
 - (C) undertake design review workshops in accordance with Section 1.8 of this Schedule 10. MTO shall be included as an invitee.
 - (vi) the process and schedule for Road Safety Audits;
 - (vii) a work breakdown structure for design indicating the Design Team and associated designers;
 - (viii) a drawing tree indicating the organization and hierarchy of DB Co’s drawings;
 - (ix) appropriate metrics to measure the progress of the design for each discipline;
 - (x) the process for certifying construction including the identification and organization of the personnel responsible for verifying construction compliance with the Design Data and the provisions of the Project Agreement to enable the Design Team representative to sign and seal the Construction Certificates; and

- (xi) the Review Procedure Activities Register (as also referenced in Schedule 12 – Works Scheduling Requirements), including plans for weekly or bi-weekly updates of this register and common platform where such register is shared with the City.
- (b) Any subsequent amendments or updates to the MTO Design Management Plan shall be submitted by DB Co to the City in accordance with Schedule 10 - Review Procedure.

2.2 Compliance with MTO Design Management Plan

- (a) DB Co shall implement and comply with the initial MTO Design Management Plan which has been reviewed by the City in accordance with Schedule 10 - Review Procedure, and any subsequent amendments or updates to the initial MTO Design Management Plan made following a review by the City in accordance with Schedule 10 - Review Procedure, in connection with all Design Data prepared or adopted in connection with the Output Specifications, the Environmental Obligations, and any other design or Construction Activities in the Project Agreement within the Highway Corridor Lands.

2.3 TAF Submission Requirements

- (a) Each Final Design Development Submittal package submitted by DB Co shall be accompanied by a completed Technical Appraisal Form (TAF).
- (b) In any case where submitted Design Data involves any mechanical, electrical and/or intelligent transportation system functions, or similar specialization, DB Co shall submit to the City in accordance with Schedule 10 - Review Procedure a TAF in respect of such data and functions.
- (c) In any case where the New MTO Infrastructure involves the complete or partial demolition of an existing Structure, DB Co shall submit to the City in accordance with Schedule 10 - Review Procedure a TAF in respect of such complete or partial demolition.

2.4 TAF Form and Content

- (a) Each TAF submitted by DB Co pursuant to Section 2.3 of this Appendix B shall be in the format shown in Attachment 1 - Sample Contents for a Structural TAF to this Schedule 10 and shall:
 - (i) for Final Design Development Submittals, include the relevant Design Criteria, environmental and ground considerations, and interface requirements, together with a listing of the design documentation included in the design package; and
 - (ii) be signed by:

- (A) the DB Co Representative; and
- (B) the Design Manager or Appropriate Person as necessary.

2.5 TAF Variation

- (a) Any variation to a TAF which has been subject to the Review Procedure during design, assessment or any Construction Activity shall be submitted in accordance with Schedule 10 - Review Procedure as an addendum to the TAF.

3. DESIGN AND CONSTRUCTION SUBMISSIONS, REVIEW AND REPORTS

3.1 MTO Design and Construction Certification

- (a) The following terms shall have the following meanings:
- (i) “**MTO Construction Certificate (Interim)**” means the certificate(s) entitled “MTO Construction Certificate (Interim)” in the form set out in Attachment 3 to this Appendix B to be issued by DB Co pursuant to Section 3.1(d) of this Appendix B of Schedule 10 – Review Procedure;
 - (ii) “**MTO Construction Certificate (Completion)**” means the certificate(s) entitled “MTO Construction Certificate (Completion)” in the form set out in Attachment 3 to this Appendix B to be issued by DB Co pursuant to Section 3.1(d) of this Appendix B of Schedule 10 – Review Procedure;
 - (iii) “**MTO Construction Certificates**” means the MTO Construction Certificate (Interim) and the MTO Construction Certificate (Completion) and “**MTO Construction Certificate**” means any one of them.
 - (iv) “**MTO Design Certificate (Environmental)**” means the certificate(s) entitled “MTO Design Certificate (Environmental)” in the form set out in Attachment 2 to this Appendix B to be issued by DB Co pursuant to Section 3.1(c) of Appendix F of Schedule 10 – Review Procedure;
 - (v) “**MTO Design Certificate (General)**” means the certificate(s) entitled “MTO Design Certificate (General)” in the form set out in Attachment 2 to this Appendix B to be issued by DB Co pursuant to Section 3.1(c) of this Appendix B of Schedule 10 – Review Procedure;
 - (vi) “**MTO Design Certificates**” means the MTO Design Certificate (General) and the MTO Design Certificate (Environmental) and “**MTO Design Certificate**” means any one of them.
- (b) MTO Design and Construction Certification Procedure
- (i) DB Co shall implement and ensure compliance with the procedure set out in this Section 3.1 (the “**MTO Design and Construction Certification Procedure**”) until Handover of the New MTO Infrastructure.
 - (ii) The MTO Design and Construction Certification Procedure shall apply to all Design Data prepared or adopted in connection with the New MTO Infrastructure, including any further design development or changes to a design once a TAF has been subjected to the Review Procedure.

- (iii) DB Co shall ensure that all certification procedures referred to in the Design and Construction Certification Procedure are complied with by the appropriate persons referred to therein, including the Design Team, and any independent team or engineer within the Design Team, as the case may be (together, the “Appropriate Persons”) and that all Appropriate Persons are at all relevant times duly authorized and qualified to carry out such procedures and to sign the relevant certificates. Any failure by any Appropriate Person to fulfill the obligations required of them under the MTO Design and Certification Procedure shall be a breach of the DB Co’s obligations under the Project Agreement.
 - (iv) DB Co shall submit all MTO Design Certificates and MTO Construction Certificates, together with the supporting documentation, to the City for review, acting reasonably, in accordance with Schedule 10 - Review Procedure. The submitted MTO Design Certificates and MTO Construction Certificates shall have original signatures, seals and registration numbers (as required in the form provided in Attachment 2 and 3 to Appendix B of Schedule 10 – Review Procedure).
- (c) MTO Design Certificates
 - (i) DB Co shall prepare and issue a separate MTO Design Certificate (in the form as provided in Attachment 2 of Appendix B) for New MTO Infrastructure for each submitted Construction Document Submittal review package, to the City for review in accordance with the Review Procedure. All MTO Design Certificates prepared and issued by DB Co shall be:
 - (A) either the MTO Design Certificate (General) or MTO Design Certificate (Environmental), as applicable;
 - (B) signed and sealed by a principal of the Design Team, and the responsible professional, who shall be a Professional Engineer or a registered Architect;
 - (C) signed by the DB Co Representative; and
 - (D) in the case only of MTO Design Certificates (Environmental), signed by the Environmental Director.
 - (ii) Any person who signs a MTO Design Certificate shall clearly print his or her name and the position held in his or her organization on the MTO Design Certificate.
- (d) MTO Construction Certificates
 - (i) DB Co shall prepare and issue MTO Construction Certificates (in the form as provided in Attachment 3 to Appendix B of Schedule 10 –

Review Procedure) for New MTO Infrastructure to the City for review in accordance with the Review Procedure:

- (A) in the case of MTO Construction Certificate (Interim), within 15 Business Days following the end of each calendar month (for that calendar month), from Financial Close until the date of delivery of written confirmation of completion of Handover of the New MTO Infrastructure pursuant to Article 25.16(f)(v) of the Project Agreement;
 - (B) in the case of MTO Construction Certificate (Completion) at least 10 Business Days prior to the delivery of written confirmation of completion of Handover of the New MTO Infrastructure pursuant to Article 25.16(f)(v) of the Project Agreement.
- (ii) All MTO Construction Certificates prepared and issued by DB Co shall be:
- (A) signed by the Construction Contractor representative;
 - (B) signed and sealed by the responsible professional who shall be a Professional Engineer or a registered Architect, and a principal of the Design Team;
 - (C) signed by the DB Co Representative; and
 - (D) for each MTO Construction Certificate (Completion) issued between Financial Close to Handover of the New MTO Infrastructure, signed by the Independent Certifier acknowledging receipt.
- (iii) Any person who signs a MTO Construction Certificate shall clearly print his or her name and the position held in his or her organization on the MTO Construction Certificate.

3.2 Format of Design and Construction Submissions

- (a) DB Co shall provide all Submittals in the format detailed in Appendix A of this Schedule 10 – Review Procedure.
- (b) [Intentionally deleted]
- (c) [Intentionally deleted]
- (d) For greater clarity, drawings for DB Co System Infrastructure, New City Infrastructure and New Utility Company Infrastructure to be constructed by DB Co within the Highway Corridor Lands shall be in accordance with the applicable standards of the City and Utility Companies, respectively.

- (e) [Intentionally deleted]

3.3 Design and Construction Submission Review

- (a) The Design Development Submittals and Construction Document Submittals from all design disciplines shall be submitted to the City in accordance with Schedule 10 - Review Procedure. The Pre-Final Design Development, Final Design Development and Construction Document Submittals shall consist of the relevant TAF(s) together with all final design drawings, supporting Design Data and calculations required in accordance with the design requirements outlined in the Project Agreement, in particular and including Schedule 15-2, Part 9 - Highway Works, and this Appendix B.
- (b) Each Design Development Submittal and Construction Document Submittal package shall cover a specific geographic segment of the Highway Works and shall include the submission requirements pertaining to all disciplines, as identified in this Appendix B. DB Co may subdivide the Highway Works into the submission of a maximum of three Design Development Submittal packages (maximum of two for Highway 417, and maximum of one for Highway 416).
- (c) DB Co shall not submit any Construction Document Submittal until Pre-Final Design Development Submittals have been submitted and reviewed pursuant to this Schedule 10 for all aspects of Highway Works.

3.4 Temporary Works

- (a) As a minimum, design submissions for Temporary Works shall include those items intended for public use and/or potentially affecting public safety. Final designs for these Temporary Works shall be submitted to the City in accordance with Schedule 10 - Review Procedure.
- (b) Design Data relating to any Temporary Works shall be checked as follows:
 - (i) any such Design Data prepared by or on behalf of the Construction Contractor requires an independent check by the Design Team; and
 - (ii) any such Design Data prepared by the designer requires an independent check by a Checking Team which may be from the designer but shall be independent of the Design Team.
- (c) In performing the check referred to in paragraph (b) above, the designer shall satisfy itself that:
 - (i) the Design Data meets the project requirements and otherwise complies with the requirements of the Project Agreement;

- (ii) the Temporary Works (as a whole and the constituent parts) are satisfactory for the safe and proper discharge of DB Co's relevant obligations; and
 - (iii) the Design Data reflects the requirements of the relevant governmental authorities for all affected Highways or other Roads or areas used by or accessible to the public other than the New MTO Infrastructure.
- (d) Where any Temporary Works may endanger public safety on other road or area used by or accessible to the public other than the New MTO Infrastructure, DB Co shall consult the relevant Governmental Authority and the Design Data shall reflect the requirements of such Governmental Authority.
- (e) Road Safety Audit Certificate shall be submitted as part of the Submittals in respect of Temporary Works in accordance with Article 10 (Road Safety Audit) of Part B of Schedule 15-2, Part 9 - Highway Works.

4. DESIGN DEVELOPMENT SUBMITTALS

4.1 General

- (a) In accordance with the MTO Design Management Plan and requirements of the Design and Construction Certification Procedure, DB Co and the City shall agree on the design information to be submitted for review in the Design Development Submittals, the schedule of such submissions and the scope of the review. The minimum requirements for the Design Development Submittals are outlined in this Appendix B.
- (b) The content of such interim design submissions shall be appropriate to the subject and discipline. The information provided shall be adequate to show that the design is proceeding in compliance with the Project Agreement for all disciplines and is taking into consideration the relevant construction activities.
- (c) Design Development Submittals shall be prepared and shall have indices and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the design criteria, design development calculations and backup information. Design submissions shall include copies of all approvals, design reports, correspondence and calculations.
- (d) The Road Safety Audit Certificate shall be submitted as part of Design Development Submittals in accordance with Schedule 15-2, Part 9, Part B, Article 10 (Road Safety Audit).

4.2 Pre-Final Design Development Submission

(a) General

- (i) DB Co shall prepare and submit any necessary draft addenda to the MTO Design Criteria (as described in MTO Directive PHM-B-021) based on DB Co's design.

(b) Roadway Design

- (i) The Pre-Final Design Development Submittals shall contain the following:
 - (A) all design drawings, including complete removals, new construction, laning and geometrics, profiles, typical and template cross-sections, and drainage;
 - (B) all staging drawings that include traffic management requirements to complete the work as well as any operational constraints related to construction operations and/or traffic management;

- (C) Explicit Safety Analysis Report;
- (D) Ball Bank Indicator Report;
- (E) Road Safety Audit Reports;
- (F) a detailed summary of critical constructability considerations;
- (G) fencing plan and design; and
- (H) ramp gate location plan and design.

(c) **Drainage Design**

- (i) The Pre-Final Design Development Submittals shall:
 - (A) address both temporary and permanent drainage design;
- (ii) The Pre-Final Design Development Submittals shall contain the following:
 - (A) all design parameters and requirements in accordance with Article 7 (Drainage and Erosion Control Design Criteria) of Part B of Schedule 15-2, Part 9 - Highway Works;
 - (B) the technical analysis and application documentation for a Permit to Take Water or EASR registration (if required);
 - (C) all drawings of drainage systems including storm sewer design sheets;
 - (D) updated floodplain mapping;
 - (E) detail drawings of water course realignments, drainage conveyance systems, and stormwater management facilities;
 - (F) Erosion and Sediment Control Plan; and
 - (G) Drainage and Stormwater Management Report, including digital modelling files.

(d) **Structures, Culvert, Submerged Culverts, High Mast Lighting Footings and Overhead Sign Support Structure**

- (i) The Pre-Final Design Development Submittals shall contain the following:
 - (A) Structural Design Reports for any Underpass or Overpass Structures and Graham Creek Culvert being rehabilitated or

replaced as part of Highway Works (calculations need not be provided at this stage);

(B) Structure Survey Reports; and

(C) Movement Plans.

(e) **Retaining Wall and Noise Barrier Design**

(i) The Pre-Final Design Development Submittals shall contain the following:

(A) geotechnical foundation report or reference to the applicable section of the Geotechnical Report;

(B) descriptions of maintenance considerations; and

(C) all design drawings.

(f) **Geotechnical Foundation Design**

(i) The Pre-Final Design Development Submittals shall contain the following:

(A) Geotechnical Report;

(B) Geotechnical Instrumentation and Monitoring Plan; and

(C) Plans and procedures for groundwater control.

(g) **Pavement Design**

(i) The Pre-Final Design Development Submittals shall contain the following:

(A) Pavement Design Report; and

(B) proposed Pavement design, depicted as cross-section drawings.

(h) **Electrical, Signing and Pavement Markings Design**

(i) The Pre-Final Design Development Submittals shall include electrical (including signals, lighting and telecommunications), signing and pavement marking plans in accordance with the requirements of Schedule 15-2, Part 9 - Highway Works, Part B, Article 6 and Schedule 15-2, Part 9 - Highway Works, Part B, Article 8.

(ii) The Pre-Final Design Development Submittals shall contain the following:

- (A) Design drawings for all electrical systems shall contain the following:
 - (I) electrical equipment and all associated support structure locations;
 - (II) lighting calculations where appropriate;
 - (III) service locations;
 - (IV) layout drawings showing electrical lighting poles, ducts, chambers, power distribution and/or supply cabinets; and
 - (V) wiring diagrams depicting low voltage power distribution as well as high voltage wiring where applicable.
- (B) Design drawings for the telecommunications conduit network, if applicable, shall contain the following:
 - (I) network diagram showing conduit locations; and
 - (II) design drawings showing the locations for all interconnection points.
- (C) Signage submissions shall contain the following:
 - (I) overhead Sign Support Structures and extruded ground-mounted Signs structure details and design calculations;
 - (II) sign design sheets for all custom guide signs;
 - (III) sign details and shop drawings for all support structures and footings; and
 - (IV) note all cantilever and sign bridge Structures submissions shall be undertaken in accordance with the MTO Sign Support Manual.
- (D) PHM-125 signal drawings shall be submitted for all temporary and permanent signals and shall contain the following:
 - (I) all Regulatory Signs that assist in the signal operations (to be included on drawing and in a legend);
 - (II) Signal hardware excluding underground provisions and electrical wiring;

- (III) Vehicle detection and nearby accesses;
 - (IV) Pavement Markings including lanes, crosswalks, stopbars and through/turning arrows;
 - (V) active transportation accommodations;
 - (VI) MTO PHM-125 standard template;
 - (VII) Hard copies in 1:500 scale; and
 - (VIII) Electronic copies in AutoCAD format.
- (E) The Temporary Signing Plan, Permanent Signing Plan, Temporary Pavement Marking Plan, and Permanent Pavement Marking Plan.
- (i) **Landscaping and Site Restoration**
- (i) The Pre-Final Design Development Submittals shall contain the following:
- (A) detailed landscape drawings that reflect any design changes, and document public consultation conducted as part of the development of the landscape drawings (drawings shall be of a suitable scale for legibility, and provide enlarged detailing where needed);
 - (B) a report detailing how the Highway Works design adheres to Context Sensitive Design requirements; and,
 - (C) tree removal and mitigation plan drawings.
- (j) **Advanced Traffic Management Systems**
- (i) The Pre-Final Design Development Submittals shall contain the following:
- (A) all design parameters and requirements in accordance with Article 11 (Advanced Traffic Management Systems Civil Requirements) of Part B of Schedule 15-2, Part 9 - Highway Works.
 - (B) design drawings that contain the following:
 - (I) layout drawings detailing the CCTV camera, VMS, Bluetooth Reader, communication system, and cabinet locations including all conduit and electrical chambers with device labelling;

- (II) detector input file connections;
- (III) communication schematics and fibre allocation table;
- (IV) electrical wiring diagrams;
- (V) civil infrastructure associated with ATMS;
- (VI) any modified MTOD including OPSD, and installation drawings; and
- (VII) temporary and removals drawings.

(k) **Traffic Engineering**

- (i) The Pre-Final Design Development Submittals shall contain the following:
 - (A) Traffic Analysis Report, which shall include comprehensive traffic analysis along with all supporting documentation and calculations;
 - (B) a detailed summary of critical traffic management considerations;
 - (C) signal timing sheets and phasing diagrams associated with the design of signalized intersections; and
 - (D) the Haul Route Plan.

(l) **Environmental Design**

- (i) The Pre-Final Design Development Submittals shall contain the following:
 - (A) applicable drawings that include:
 - (I) ecological restoration areas including Species-at-Risk and any environmentally sensitive areas, and all restoration areas;
 - (II) all fisheries compensation plan areas to secure Fisheries Act Authorizations from Fisheries and Oceans Canada;
 - (III) all drainage and stormwater management pond areas; and
 - (IV) erosion and sediment control measures.

- (B) riparian restoration and terrestrial reclamation/revegetation drawings that, as a minimum, describe timing requirements, seed mixes and applications rates of hydroseeding and site specific restoration plans, including species type, size and spacing for riparian areas, areas of higher sensitivity, and areas prone to erosion or shallow slope movement;
 - (C) environmental design drawings that show environmental mitigation and compensation features and any environmental features to be constructed;
 - (D) environmental design documentation including:
 - (I) regulatory agency review and acceptance documentation for the Environmental Management System specific to the Highway Works;
 - (II) all licenses, notifications, permits, authorisations and approvals specific to the Highway Works; and
 - (III) all assessments, studies, surveys, monitoring reports, and plans specific to the Highway Works.
 - (E) an environmental design criteria checklist that lists general environmental commitments and assurances, environmental design commitments, site specific environmental features and environmental mitigation/compensation plans including all commitments, assurances and plans relating to archaeological features; and
 - (F) stakeholder issues, environmental issues and mitigation plans.
- (m) **Utility Design**
- (i) The Pre-Final Design Development Submittals shall contain the following:
 - (A) Utility Infrastructure Relocation Plans, as generally described in Schedule 10, Article 2, and including the additional requirements identified in Schedule 15-2, Part 9; and
 - (B) Protection measures for Utilities to be protected in place during the Highway Works.

4.3 Final Design Development Submission

(a) **General**

- (i) All Final Design Development Submittals shall address any comments of the City from the Design Workshops, internal design reviews, quality control, and design reports.
- (ii) Quantity Sheets shall be provided by DB Co and shall be prepared using the latest version of the MTO's Contract Preparation System (CPS).
- (iii) DB Co shall prepare and submit any necessary addenda to the MTO Design Criteria (as described in MTO Directive PHM-B-021) based on DB Co's design. This will be the final submittal for approval by MTO.
- (iv) The Final Design Development Submittals shall contain all specifications, special provisions and operational constraints for the Works.

(b) **Roadway Design**

- (i) The Final Design Development Submittals shall contain the following:
 - (A) updated information from the Pre-Final Design Development Submittals; and
 - (B) Cross-section drawings.

(c) **Drainage Design**

- (i) The Final Design Development Submittals shall contain the following:
 - (A) updated information from the Pre-Final Design Development Submittals.

(d) **Structures, Culvert, Submerged Culverts, High Mast Lighting Footings and Overhead Sign Support Structure**

- (i) The Final Design Development Submittals shall contain the following:
 - (A) updated information from the Pre-Final Design Development Submittals.

(e) **Retaining Wall and Noise Barrier Design**

- (i) The Final Design Development Submittals shall contain the following:
 - (A) updated information from the Pre-Final Design Development Submittals; and
 - (B) a neat, bound, indexed set of design calculations for the walls initialled by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline.

(f) **Geotechnical Foundation Design**

(i) The Final Design Development Submittals shall contain the following:

(A) updated information from the Pre-Final Design Development Submittals.

(g) **Pavement Design**

(i) The Final Design Development Submittals shall contain the following :

(A) updated information from the Pre-Final Design Development Submittals.

(h) **Electrical, Signing and Pavement Markings Design**

(i) The Final Design Development Submittals shall contain the following:

(A) updated information from the Pre-Final Design Development Submittals.

(i) **Landscaping and Site Restoration**

(i) The Final Design Development Submittals shall contain the following:

(A) updated information from the Pre-Final Design Development Submittals.

(j) **Advanced Traffic Management Systems**

(i) The Final Design Development Submittals shall contain the following:

(A) updated information from the Pre-Final Design Development Submittals; and

(B) Pre-Installation Test Plan (PIT), Proof of Performance Test Plan (POP), and System Integration Test Plan (SIT).

(k) **Traffic Engineering**

(i) The Final Design Development Submittals shall contain the following:

(A) updated information from the Pre-Final Design Development Submittals.

(l) **Environmental Design**

(i) The Final Design Development Submittals shall contain the following:

- (A) updated information from the Pre-Final Design Development Submittals; and
 - (B) draft Design and Construction Report (DCR).
- (m) **Utility Design**
 - (i) The Final Design Development Submittals shall contain the following:
 - (A) Updated information from the Final Design Development Submittals, including all draft materials required for an Encroachment Permit application.

5. CONSTRUCTION DOCUMENT SUBMISSION

5.1 General

- (a) Construction Document Submittals shall be prepared and shall have indexes and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the design criteria, design calculations and backup information. Design submissions shall include copies of all approvals, design reports, correspondence and calculations.
- (b) Final design drawings and reports shall be developed to a stage that is ready to be signed and sealed by the responsible Engineer, who shall be a duly experienced Professional Engineer of an appropriate discipline.
- (c) The Road Safety Audit Certificate shall be submitted as part of Construction Document Submittals in accordance with Schedule 15-2, Part 9 - Highway Works, Part B, Article 10 (Road Safety Audit).
- (d) DB Co shall document changes and describe the design work that has been developed since the Design Development Submittals or previous design stage of Construction Document Submittals.
- (e) All Construction Document Submittals shall address any comments of the City from Design Review Workshops, internal design reviews, quality control, and design reports.
- (f) The Construction Document Submittals shall contain resolution of all issues identified during Design Development Submittal reviews.
- (g) Quantity Sheets shall be provided by DB Co and shall be prepared using the latest version of the MTO's Contract Preparation System (CPS).
- (h) The Construction Document Submittals shall contain all specifications, special provisions and operational constraints for the Works.

5.2 Roadway Design

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals.

5.3 Drainage Design

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals.

5.4 Structures, Culvert, Submerged Culverts, High Mast Lighting Footings and Overhead Sign Support Structure

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals.

5.5 Retaining Wall and Noise Barrier Design

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals;
 - (b) For proprietary Retaining Walls, the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline, shall certify the design and construction of the Retaining Walls.

5.6 Geotechnical Foundation Design

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals.

5.7 Pavement Design

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals.

5.8 Electrical, Signing and Pavement Markings Design

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals.

5.9 Landscaping and Site Restoration

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals.

5.10 Intelligent Transportation Systems

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals.

5.11 Traffic Engineering

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals.

5.12 Environmental Design

- (a) The Construction Document Submittals shall contain the following:
 - (i) updated information from the Final Design Development Submittals;
 - (ii) Design and Construction Report;
 - (iii) Final Eligibility Letter for EA Clearance / Environmental Clearance Letter, and comments and responses during the completed 30 day review period; and
 - (iv) Contract drawings as required and in conformity to Design and Construction Reports (DCR).

5.13 Utility Design

- (a) The Construction Document Submittals shall contain the following:
 - (i) Updated information from the Final Design Development Submittals, including all draft materials required for an Encroachment Permit application (or a copy of the application if already submitted to MTO).

5.14 Issued for Construction Drawings

- (a) DB Co shall submit signed and sealed copies of all drawings and specifications that are “Issued for Construction”, together with manuals, instructions to the Construction Contractor and other relevant information as requested by the City Representative, to the City Representative and to the Independent Certifier.
- (b) Issued for Construction documents shall be signed and sealed by the responsible engineer, who shall be a Professional Engineer.

5.15 Record Drawings

- (a) DB Co shall provide a detailed log (spreadsheet format) identifying all Record Drawings. The detailed log shall include, as a minimum, the drawing number for all Record Drawings with a summary of the changes made during the Construction Period.

6. CHECKING OF STRUCTURAL DESIGN

- 6.1** In accordance with Article 4.2 (General Requirements) of Part B of Schedule 15-2, Part 9 - Highway Works, for relevant design submissions submitted in accordance with the Review Procedure, DB Co shall submit an Independent Structural Design Check Certificate, in the form provided as Attachment 4 to this Appendix B.

ATTACHMENT 1

Sample Contents for a Structural TAF

SAMPLE CONTENTS FOR A STRUCTURAL TAF

Ref. No:

1. PROJECT DESCRIPTION

- 1.1 Name and location of structure
- 1.2 Permitted traffic speed (for a Bridge give over and/or under)

2. PROPOSED STRUCTURE

- 2.1 Description of Structure
- 2.2 Structural type *(Include reasons for choice)*
- 2.3 Foundation type *(Include reasons for choice)*
- 2.4 Span arrangements *(Include reasons for choice)*
- 2.5 Barrier type
- 2.6 Proposed arrangements for inspection and maintenance
- 2.7 Materials and finishes

3. DESIGN/ASSESSMENT CRITERIA

- 3.1 Live Loading, Clearances
 - 3.1.1 Bridge code loading
 - 3.1.2 Design vehicle
 - 3.1.3 Other live loading
 - 3.1.4 Provision for exceptional abnormal loads:
 - 3.1.4.1 Gross weight
 - 3.1.4.2 Axle load and spacing
 - 3.1.4.3 Location of vehicle track on deck cross-section
 - 3.1.5 Any special loading not covered above
 - 3.1.6 Minimum clearances provided (vertical and horizontal)
 - 3.1.7 Authorities consulted and any special conditions required

- 3.2 List of relevant design documents

4. STRUCTURAL ANALYSIS

- 4.1 Methods of analysis proposed for Superstructure, Substructure and Foundations
- 4.2 Description and diagram of structure to be used for analysis
- 4.3 Assumptions intended for calculation of structural element property and stiffness
- 4.4 Proposed earth pressure coefficients (k_a , k_o , or k_p) to be used in design of earth retaining elements

5. GROUND CONDITIONS

- 5.1 Acceptance of interpretative recommendations of the soils report to be used in the design and reasons for any proposed departures
- 5.2 Describe Foundations fully including the reasons for adoption of allowable and proposed bearing pressures/pile loads, strata in which Foundations are located, provision for skin friction effects on piles and for lateral pressures due to compression of underlying strata, etc.
- 5.3 Differential settlement to be allowed for in design of structure
- 5.4 Anticipated ground movements or settlement due to embankment loading, flowing water, and measures proposed to deal with these defects as far as they affect the structure
- 5.5 Results of tests of ground water (e.g. pH value, chloride or sulphate content) and any counteracting measures proposed (as applicable)
- 5.6 Anticipated ground movements or settlement due to seismic loading, measures proposed to deal with these impacts as far as they affect the structure

6. CHECKING

- 6.1 Name of proposed Checking Team

7. DRAWINGS AND DOCUMENTS

- 7.1 List of drawings (including numbers) and documents accompanying the submission. To include:
 - 7.1.1 a location plan;
 - 7.1.2 a preliminary general arrangement drawing; and

7.1.3 relevant parts of the ground investigation report.

8. THE ABOVE DESIGN AND CONSTRUCTION PROPOSALS ARE SUBMITTED FOR REVIEW.

Signed: _____

[Design Manager]

Name: _____

Engineering Qualifications: _____

Date: _____

Professional Registration Number:

Affix Professional Seal

Signed: _____

DB Co Representative

Name: _____

Date: _____

Professional Registration Number:

Affix Professional Seal

ATTACHMENT 2

Form of MTO Design Certificates

Certificate Ref No. []

MTO DESIGN CERTIFICATE (GENERAL)

In respect of :..... (Provide
submittal details e.g. Roadway, Structures, Drainage, Geotechnical, etc.)

Project Agreement between the City and DB Co dated [●] (“the Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.

This form of certificate is to be used by the Design Team and DB Co for certifying the design of the New MTO Infrastructure to the extent that such New MTO Infrastructure components have been constructed, installed, altered, upgraded, and/or augmented, in accordance with Schedule 15-2 – Output Specifications - Design and Construction.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.

2. We certify that we have prepared the Design Data for [.....] listed in the schedule hereto in accordance with all applicable requirements contained in the [MTO Design Management Plan] [Design Quality Management Plan] and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data [Note to Proponents: Inapplicable language to be deleted/]:

i. complies with all applicable [Output Specifications], including Technical Appraisal Form No. [.....] dated [.....] as amended by the following [Note to Proponents: Inapplicable language to be deleted.]:

[List, if any, the changes made by the issue of Variation(s) and any addenda to the foregoing Technical Appraisal Form];

ii. complies with all applicable design requirements of the Project Agreement;

iii. complies with Applicable Law and Good Industry Practice; and

iv. accurately describes and depicts the New MTO Infrastructure to be undertaken.

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Certified by: _____

[Design Team (principal)]

Name: _____

Title: _____

Date: _____

Professional Registration Number:

Affix Professional Seal

Signed: _____

DB Co Representative

Name: _____

Date: _____

Certificate Ref No. []

MTO DESIGN CERTIFICATE (ENVIRONMENTAL)

Project Agreement between the City and DB Co dated [●] (“the Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.

This form of certificate is to be used by the Design Team, Environmental Director and DB Co for certifying the design of environmental works incorporated in the New MTO Infrastructure in accordance with the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Design and Construction Specifications.
2. We certify that we have prepared the Design Data for [.....] [Name and list of all elements of the environmental works] in the schedule hereto in accordance with all applicable requirements contained in the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:

- i. complies with all applicable [Design and Construction Specifications], including Technical Appraisal Form No. [.....] dated [.....], as amended by the following [Note to Proponents: Inapplicable language to be deleted.]:

[List, if any, the changes made by the issue of Variation(s), and any addenda to the foregoing Technical Appraisal Form];

- ii. complies with all applicable requirements of Schedule 17 - Environmental Obligations;
- iii. complies with all applicable design requirements of the Project Agreement;
- iv. complies with Applicable Law and Good Industry Practice; and
- iv. accurately describes and depicts the New MTO Infrastructure to be undertaken.

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Certified by: _____

[Design Team (principal)][Designer for OM&R Provider (principal)] **[Note to Proponents: Inapplicable language to be deleted.]**

Name: _____

Title: _____

Date: _____

Professional Registration Number:

Affix Professional Seal

Signed: _____

Environmental Director

Name: _____

Title: _____

Date: _____

Professional Registration Number:

Affix Professional Seal

Signed: _____

DB Co Representative

Name: _____

Date: _____

ATTACHMENT 3

Form of MTO Construction Certificates

Certificate Ref. No. []

MTO CONSTRUCTION CERTIFICATE (INTERIM)

Project Agreement between the City and DB Co dated [●] (“the Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.

This form of certificate is to be used by the Design Team, Construction Contractor and DB Co for certifying in accordance with Section 3.1(d) of this Appendix B to Schedule 10 – Review Procedure, the Construction Activities in accordance with Schedule 15 – Output Specifications to the Project Agreement. This certificate is effective as of [date].

Construction Contractor’s Statement

1. We certify that all the New MTO Infrastructure up to the effective date of this certificate has been designed, constructed, tested, and if applicable commissioned, and is in accordance with:

- i. the relevant Design Data and any Design Certificates issued to date in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

with the exception of:

i **[Non-Conformance Report(s) in “open” status]**

Signed: _____

[Construction Contractor representative]

Name: _____

Date: _____

Design Team's Statement

2. We certify that we have examined the New MTO Infrastructure up to the effective date of this certificate in accordance with the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion the New MTO Infrastructure and exception(s) stated in the Construction Contractor's Statement above has been designed, constructed, tested and commissioned, as applicable, and is in accordance with:

- i. the relevant Design Data and any Design Certificates issued to date in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

Signed: _____

[Design Team (principal)]

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

DB Co Representative

Name: _____

Date: _____

Receipt of this Certificate is acknowledged.

Signed: _____

Independent Certifier

Name: _____

Title: _____

Date: _____

Certificate Ref. No. []

MTO CONSTRUCTION CERTIFICATE (COMPLETION)

Project Agreement between the City and DB Co dated [●] (“the Project Agreement”) relating to the Project. Defined terms and expressions used in this certificate have the meanings given in the Project Agreement.

This form of certificate is to be used by the Design Team, Construction Contractor and DB Co for certifying in accordance with Section 3.1(d) of this Appendix B to Schedule 10 – Review Procedure, the Construction Activities in accordance with Schedule 15 – Output Specifications to the Project Agreement.

Construction Contractor’s Statement

1. **We certify that [name(s) and element(s) of the New MTO Infrastructure] [the New MTO Infrastructure in respect of Handover] has been designed, constructed, [commissioned and tested] and has met the requirements for [Handover] in accordance with: [Note to Proponents: Inapplicable language to be deleted.]**

- i. the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the following Variation(s): [.....]].

Signed: _____

[Construction Contractor representative]

Name: _____

Date: _____

Design Team's Statement

2. We certify that we have examined the [name(s) and element(s) of the New MTO Infrastructure] [the New MTO Infrastructure in respect of Handover] in accordance with the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion [the said element of the New MTO Infrastructure][the New MTO Infrastructure] has been designed, constructed, [commissioned and tested] and has met the requirements for [Handover] in accordance with: *[Note to Proponents: Inapplicable language to be deleted.]*

- i. the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
- ii. Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Design and Construction Specifications [as amended by the Variation(s) listed in paragraph 1.(iii) above].

Signed: _____

[Design Team (principal)]

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

DB Co Representative

Name: _____

Date: _____

Receipt of this Certificate is acknowledged.

Signed: _____

Independent Certifier

Name: _____

Title: _____

Date: _____

ATTACHMENT 4

Certificate Form

Certificate Ref. No []

INDEPENDENT STRUCTURAL DESIGN CHECK CERTIFICATE

Defined terms and expressions used in this certificate have the meanings given in the agreement between the City and DB Co dated [●] (“the Project Agreement”) relating to the Project.

This form of certificate is to be used by the Independent Checking Team for certifying the design of structures incorporated in the New MTO Infrastructure, in accordance with Part B of Schedule 15-2 Schedule 15-2, Part 9 - Highway Works to the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to perform an independent check of the Design Data referred to herein in accordance with the requirements of the Project Agreement.
2. We certify that we have performed an independent check (as required by the Project Agreement for Significant and Complex Structures) of the Design Data for [.....] **[Name of the Structure and list of all elements of the Structure included in the Design Data]** listed in the Schedule hereto and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such an independent check, and that in our professional opinion:

- i. the said Design Data meets performance expectations outlined in the Project Agreement, **[including Technical Appraisal Form]** No. [.....] dated [.....], as amended by the following:

[List, if any, the changes made and any addenda to the foregoing Technical Appraisal Form]; and
- ii. the design, methodologies and assumptions are consistent with Good Industry Practice.

SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

Signed: _____

Independent Checking Team (principal)

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

DB Co Representative

Name: _____

Date: _____

SCHEDULE 11

INTEGRATED MANAGEMENT SYSTEM REQUIREMENTS

[REDACTED]

**SCHEDULE 12
WORKS SCHEDULING REQUIREMENTS**

[REDACTED]

SCHEDULE 13

DB CO PROPOSAL EXTRACTS

[REDACTED]

SCHEDULE 14

TESTING & COMMISSIONING

[REDACTED]

SCHEDULE 15

OUTPUT SPECIFICATIONS

[REDACTED]

SCHEDULE 16

ENCUMBRANCES

- (a) For the purposes of this Schedule 16, the defined term “Lands” shall include any portion of the Lands.
- (b) Each of the following, to the extent affecting the interest (whether real property interest or contractual interest) of the City in the Lands or any other person who owns the Lands (or any part thereof), is, in each case, considered to be an encumbrance for the purposes of the Project Agreement (each, an “**Encumbrance**”):
 - (i) all encumbrances, pledges, liens, charges, security agreements, security interests, leases, subleases, title retention agreements, mortgages, easements, encroachments, rights-of-way, restrictive covenants, work orders, options or adverse claims of any kind or character whatsoever relating to the title to the Lands disclosed or noted on the land registry office parcel registers or abstract indices for the Lands from time to time, including (but not limited to) those that may have been included in the Background Information as of the date of the Project Agreement, those described or contemplated in Schedule 20 - Lands and including those referred to in the legal descriptions for the Lands available in the applicable land registry office, in each case as assigned, amended, extended, supplemented, substituted and replaced from time to time;
 - (ii) liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by the City;
 - (iii) inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to the City pursuant to the CA or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, the City has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts;
 - (iv) the rights reserved to or vested in the public or any municipality or governmental or other public authority by any statutory provision;
 - (v) any subsisting reservations, limitations, provisions and conditions contained in any grants from the Crown of any land or interests therein, including reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same;
 - (vi) any encroachments, easements, rights-of-way, rights to use or similar interests revealed by any survey of the Lands or which would be revealed by an up-to-date survey of the Lands;

- (vii) any rights in favour of or accruing to holders of under-surface rights which could be ascertained by a review of registered title or other public records, or, if unregistered, which do not materially interfere with the use of the Lands for the purposes of the Works;
- (viii) unregistered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, provided such unregistered agreements have been disclosed to DB Co, are described in Schedule 20 - Lands or could be ascertained by commercially standard off-title searches, or, if not so disclosed, described, or ascertainable, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided that such agreements have been complied with up to Financial Close, or, if not complied with (excluding non-compliance by DB Co and DB Co Parties), that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works;
- (ix) unregistered agreements, authorizations, consents, postponements, subordinations, licences or instruments entered into provided that they have been disclosed to DB Co, are described in Schedule 20 – Lands or could be ascertained by commercially standard off-title searches, or, if not so disclosed, described or ascertainable, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such agreements, authorizations, consents, postponements, subordinations, licences or instruments have been complied with up to Financial Close, or, if not complied with (excluding non-compliance by DB Co and DB Co Parties), that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works;
- (x) unregistered easements, rights-of-way, rights to use, restrictions, restrictive covenants and similar rights in real property or any interest therein provided that they have been disclosed to DB Co, are described in Schedule 20 – Lands or which could be ascertained by commercially standard off-title searches, or if not so disclosed, described or ascertainable, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such easements, rights of way, rights to use, restrictions, restrictive covenants and similar rights or interests have been complied with up to Financial Close, or, if not complied with (excluding non-compliance by DB Co and DB Co Parties), that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works;
- (xi) zoning (including, without limitation, airport zoning regulations), land use, property standards and building by-laws and ordinances, and federal, provincial or municipal by-laws and regulations;
- (xii) minor imperfections of title;
- (xiii) statutory exceptions to title and any rights reserved to or vested in any person by any statutory provision;
- (xiv) the right of any prior owner, occupant or tenant of any portion of the Lands to occupy any portion of the Lands or to remove buildings, fixed machinery, equipment, fittings or other fixtures located on such portion of the Lands; and
- (xv) the rights of any person entitled to any portion of the Lands through length of adverse possession or prescription.

**SCHEDULE 17
ENVIRONMENTAL OBLIGATIONS**

[REDACTED]

SCHEDULE 18
COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT OBLIGATIONS

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PART 1 DEFINITIONS

- 1.1** **“Construction Activities Incident”** has the meaning given in Section 5.1(e).
- 1.2** **“Construction Complaints Protocol”** has the meaning given in Section 4.15(b).
- 1.3** **“Communications Performance Report”** has the meaning given in Section 4.16(a).
- 1.4** **“Communications and Stakeholder Engagement Objectives”** has the meaning given in Section 2.2(a).
- 1.5** **“Communications and Stakeholder Engagement Plan”** has the meaning given in Section 3.1(a)(i).
- 1.6** **“Communications and Stakeholder Engagement Working Group”** has the meaning given in Section 6.1(a).
- 1.7** **“Crisis Communication Plan”** has the meaning given in Section 4.4(a).
- 1.8** **“DB Co Communications and Stakeholder Engagement Team”** has the meaning given in Section 3.2(a)(xix).
- 1.9** **“Key Milestone Celebrations”** means celebrations and larger events with the objective of building momentum for the Project, recognizing project milestones and partners. These celebrations include groundbreakings, progress events, and substantial completion.
- 1.10** **“Stakeholder Relations”** has the meaning given in Section 2.2(a)(i).

PART 2 PRINCIPLES, OBJECTIVES AND SCOPE

2.1 Communications and Stakeholder Engagement Principles

- (a) The Project represents an important infrastructure commitment by the City. Comprehensive plans for communications and Stakeholder engagement are required to ensure Stakeholders are informed and engaged where necessary and to meet the City's communications and Stakeholder engagement requirements.
- (b) The City and DB Co shall work together to deliver these communications and Stakeholder engagement activities pursuant to the Project Agreement, including this Schedule 18.
- (c) The City will act as the public face of the project and lead on all Stakeholder relations and communications activities.
- (d) DB Co acknowledges that:
 - (i) DB Co is the City's and the Stakeholders' primary source of information with respect to all matters within DB Co's control for the Project; and
 - (ii) the City, at all times during the Project Term, shall rely upon DB Co not only to anticipate matters which may be of interest and concern to Stakeholders during the Project Term (based on its experience as well as lessons learned during the course of the Project), but also to proactively organize and disseminate such information in accordance with its obligations in the Project Agreement.

2.2 Communications and Stakeholder Engagement Objectives

- (a) The Communications and Stakeholder Engagement Objectives of the Project are as follows:
 - (i) to engage with Stakeholders to provide targeted information to area residents and businesses on the Project design and Construction Activities and their potential impacts ("Stakeholder Relations") by:
 - (A) communicating disruptions, such as detours, overnight work, traffic adjustments and beginning of construction, in an effective and timely manner;
 - (B) providing public information and consultation opportunities to ensure Stakeholders are informed and engaged throughout to minimize complaints and increase understanding of the Project;
 - (C) ensuring Stakeholder input is obtained in a timely manner so that it may be properly considered by the Parties; and
 - (D) continuing to work with established community working groups and other networks identified during the planning and Environmental Assessment phase.
 - (ii) To communicate in a manner that builds excitement and understanding of the Project by:
 - (A) developing momentum-building communications to promote the Project, including

Key Milestone Celebrations, signage, hoarding, and advertising;

- (B) developing resources and templates to effectively and consistently communicate with Stakeholders; and
- (C) recognizing the contribution of the Parties in this Project Agreement and the City's funding partners.

2.3 Communication and Stakeholder Engagement Scope

- (a) The scope of this Schedule 18 includes, but is not limited to, all print, event and electronic communications and Stakeholder engagement related to: planning, design, Environmental Approvals, Construction Activities, Project milestones, community and Stakeholder relations, media relations, media and governmental events, other special events, public information meetings, branded products, the Project website, social media, complaints and issues related to the Project, and any responses to such complaints or issues.

**PART 3 COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT RESPONSIBILITIES
DURING THE PROJECT TERM**

3.1 City Responsibilities

- (a) The City will assume the lead communications and Stakeholder engagement role and will have the primary responsibility for all communications matters and Stakeholder Relations related to the Project. The City will:
 - (i) develop a yearly updated Project communications and stakeholder engagement plan (the “**Communications and Stakeholder Engagement Plan**”) with input from DB Co;
 - (ii) develop and provide tools and templates for all communications and Stakeholder engagement Project materials, unless otherwise specified in this Schedule 18;
 - (iii) develop and maintain a website, with input from DB Co;
 - (iv) provide identified, dedicated lead communications and Stakeholder engagement contacts;
 - (v) act as the primary media contact for the Project;
 - (vi) provide final review and approval of all communications and Stakeholder engagement materials;
 - (vii) communicate promptly with all relevant parties on Project issues; and
 - (viii) provide coordinated updates to Stakeholders.

3.2 DB Co Responsibilities

- (a) DB Co shall:
 - (i) carry out all activities required to fulfill all of DB Co’s communications and Stakeholder obligations in accordance with this Schedule 18;
 - (ii) along with the City, participate in the development of Communications and Stakeholder Engagement Plans, and develop the Crisis Communication Plan in consultation with the City and Stakeholders and in accordance with this Schedule 18;
 - (iii) implement and comply with all plans, protocols and other documentation that have been reviewed and approved by the City and in accordance with this Schedule 18;
 - (iv) provide all information, materials and support to the City, as the City may reasonably require, in accordance with the requirements in the Communications and Stakeholder Engagement Plan and this Schedule 18;
 - (v) assist the City in responding to media, government and public enquiries related to the Project including but not limited to subject-matter expertise, key facts and media questions and answers in accordance with the requirements in the Communications and

Stakeholder Engagement Plan and this Schedule 18;

- (vi) provide, where required by the City, Project experts, to include but not be limited to design and construction engineers and environmental specialists to participate in special events, Stakeholder events and outreach meetings;
- (vii) in accordance with Part 5 of this Schedule, provide regular notifications to the City related to the management of local traffic during the Construction Period and ensure communication obligations in relation to the TTMP as detailed in Schedule 15-2, Part 7 – Traffic and Transit Management and Construction Access are fulfilled;
- (viii) attend special events, site tours and Stakeholder events and Stakeholder outreach meetings in accordance with Part 4 of this Schedule;
- (ix) work with the City to build and foster relationships with local businesses and the public in order to address the community's concerns about the Works;
- (x) make staff available to respond to enquiries from Stakeholders about the Works;
- (xi) support the City in providing regular updates to immediately-affected property owners, tenants and neighbourhoods on Works related issues;
- (xii) support the City in notifying affected residents and businesses of Construction Activities in accordance with Part 5 of this Schedule;
- (xiii) provide any necessary information required to demonstrate compliance with and fulfillment of the consultation related provisions of the Environmental Assessments and any other Environmental Approvals as detailed in Schedule 17 – Environmental Obligations;
- (xiv) support the City in making communications materials accessible to the public by meeting the City's Accessibility Standards in compliance with the *Accessibility for Ontarians with Disabilities Act* (AODA) and in keeping with the City's Accessibility Policy and Procedures;
- (xv) support the City in making communications materials available in French and English where required by the City in compliance with the City's Bilingualism Policy;
- (xvi) work with all DB Co Parties, the City, and Project Stakeholders in carrying out DB Co's obligations as set out in this Schedule 18;
- (xvii) ensure that DB Co and DB Co Parties exhibit a high degree of professionalism and courteousness with respect to carrying out all of DB Co's obligations under this Schedule 18, including:
 - (A) attendance at City-requested special events, site tours, Stakeholder events and Stakeholder outreach meetings;

- (B) managing staff and contractor parking such that it does not negatively impact neighbourhood or business access;
 - (C) not littering; and
 - (D) protecting and restoring any affected City and Third Party Facilities adjacent to the Works, in accordance with Schedule 15-2, Part 1, Article 4.1.
- (xix) provide a description of DB Co's dedicated communications and Stakeholder engagement team (the "**DB Co Communications and Stakeholder Engagement Team**"), within 45 days of Financial Close, including the roles, responsibilities and experience of each team member and DB Co Party who will assist the implementation of Schedule 18. The DB Co Communications and Stakeholder Engagement Team shall:
- (A) be led by a Director of Communications and Stakeholder Engagement who:
 - 1) shall have the qualifications set out in Schedule 9 – Key Individuals;
 - 2) is a member of DB Co's management team;
 - 3) is responsible for acting as the media spokesperson;
 - 4) possesses demonstrated relevant communications experience.
 - (B) provide sufficient other members of the team to meet the obligations of this Schedule who have relevant experience in communications writing, media relations, crisis communications, issues management, corporate and community relations;
 - (C) include at least one member acting as a Stakeholder outreach coordinator; and
 - (D) each member of the DB Co Communications and Stakeholder Engagement Team other than the Director shall possess a minimum of five years of transit or transportation construction-related communications experience.
- (b) DB Co acknowledges and agrees that, notwithstanding any other provision in this Schedule 18, the City will review and approve all communications and Stakeholder engagement materials with respect to the Project, and DB Co may not make any communications or disseminate any materials to Stakeholders with respect to the Project without the prior consent of the City.

3.3 Communications and Stakeholder Engagement Plan

- (a) The DB Co Communications and Stakeholder Engagement Team shall, no later than 60 days following Financial Close participate in the first Communications and Stakeholder Engagement Working Group meeting where the City will present an initial outline of the Project Communications and Engagement Plan.
- (b) Based on the outline of the Project Communications and Engagement Plan and in accordance with Schedule 18, DB Co will prepare a description of its communications and Stakeholder engagement requirements, including the DCR Consultation Plan, as part of the Communications and Stakeholder Engagement Plan no later than 90 days following Financial Close. This description will include the first submission of the first yearly construction schedule as detailed in Section 4.3(a)(i).

- (c) DB Co shall participate with the City in a workshop to finalize the Communications and Stakeholder Engagement Plan. The City's communications and stakeholder engagement lead will organize and chair the workshop no later than 120 days following Financial Close.
- (d) DB Co shall participate with the City to update the Communications and Stakeholder Engagement Plan:
 - (i) on an annual basis; or
 - (ii) more frequently as may be requested by the City, or as may be required to account for any changes in the circumstances of, or lessons learned with respect to the Project.

PART 4 COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT ACTIVITIES

4.1 Communications Activities - General

- (a) DB Co shall support the following communication activities during the Construction Period as requested by the City, including:
 - (i) Project communications via the Project website and social media;
 - (ii) construction schedule for communications;
 - (iii) crisis communications;
 - (iv) issues management;
 - (v) media relations;
 - (vi) government reporting;
 - (vii) special events, site tours and trade shows;
 - (viii) Stakeholder events and Stakeholder outreach meetings;
 - (ix) hoarding design, installation and maintenance during the Construction Period;
 - (x) signage and branding;
 - (xi) advertising communications and marketing;
 - (xii) Project identity and graphic design;
 - (xiii) photography and video;
 - (xiv) renderings; and
 - (xv) crisis management.

4.2 Communications via the Project Website and Social Media

- (a) During the Construction Period, DB Co shall:
 - (i) support the City's social media strategy for the Project (which may include tools such as Twitter, Facebook, YouTube and Flickr) and the City's Project websites' static (written) and dynamic (multimedia) content, by providing, for review and approval by the City, where the quality of the photography and video is as described in Section 4.13:
 - (A) a monthly feature web article highlighting, but not limited to, one aspect of the Project including, design, innovations on the Project, feature on local workers,

general contractors or local companies, Construction Activities, or Project benefits, with a minimum length of 500 words, as well as two related Twitter posts for the Project's Twitter account;

- (B) a weekly construction update on Project construction that provides a recent summary of construction work completed and upcoming work along the alignment including high-quality representative professional photographs (see Section 4.13 for photo quality specifications);
 - (C) a weekly Twitter post with photograph(s) along with associated written description for the City's use, including the Mayor;
 - (D) notifications of public consultations, consultation materials and post-consultation summaries;
 - (E) develop all photos for weekly construction updates for submission to and approval by the City;
 - (F) interactive map(s) that provide an overview of the extensions, along with information on key activities at each site (stations), which should be regularly maintained and updated monthly at a minimum;
 - (G) monthly short video clips for the purposes of social media; and
 - (H) up-to-date graphics, photos and video clips showcasing the design of each Station and progress of the Construction Activities;
- (ii) provide drafts of proactive and reactive content for responses to crisis situations, immediate issues, public queries or complaints, no later than two hours after DB Co or the City becomes aware of any such crisis situation, immediate issue, public query or complaint;
 - (iii) provide draft advance notification for the purposes of website and social media updates for review and approval by the City with respect to meetings, events, initiatives, and Construction Activities that will have a direct impact on roads, traffic and/or transit; and
 - (iv) develop web content to support government Stakeholders (e.g. MTO) web and social media communications needs for review and approval by the City.

4.3 Construction Schedule for Communications

- (a) During the Construction Period, DB Co shall prepare and submit for the City's review and approval the following schedule information. In advance of submitting the schedule information, DB Co shall also submit a template of each schedule for the City's review and approval:
 - (i) a yearly construction schedule and detour plan in a format that is readily useable in communicating the Project milestones, to be updated on a yearly basis and no later than March 31st of each calendar year to the end of the Project Term. This yearly plan should come in the form of a report with a visual chart and accompanying wording that identifies

and describes timing and impacts of major issues and disruptive activities, and the communication milestones for the upcoming year, as categorized below:

- (A) final station designs
 - (B) start/end of prescribed detours
 - (C) start/end of station construction
 - (D) start/end of hwy works or other bundled projects/component of the works
 - (E) start/end of road closures
 - (F) start/end of sidewalk and/or MUP re-alignments
 - (G) start/end of works impacting greenspace/park areas
- (ii) a semi-annual construction schedule update for use in communicating project milestones, as well as a semi-annual Project dashboard to support the City's communications and social media strategies that highlights key statistics and benefits of the Project, including but not limited to the number of local firms employed, number of local jobs created and training through registered apprenticeship programs, sub-contract value, kilometres of track laid, amount of concrete poured, level of completion of stations along the alignment extensions, to be updated no later than December 31st and June 30th of each calendar year;
- (iii) a three-month look ahead calendar outlining construction activities, including a description of scope and anticipated impacts, and any notification requirements as detailed in Part 5 of this Schedule, and based on level of impact, and DB Co resources assigned, that will support the City's communications and social media strategies; and
- (iv) a dashboard to provide regular weekly updates and bi-weekly look-aheads about Construction Activities, including statistics, amount of local investments, number of direct jobs and training through registered apprenticeship programs, schedule and other information that will support the City's communications and social media strategies.

4.4 Crisis Communication

- (a) DB Co shall develop, in consultation with the City, a Crisis Communication Plan that outlines the roles, responsibilities and contacts for DB Co in relation to the City and other partners as required (e.g. MTO) with respect to crisis communications, and identify and rank a list of potential crisis issues that could develop during the performance of the Works (the "**Crisis Communication Plan**"). The Crisis Communication Plan shall comply with the City's emergency communication plan and include notification standards for media responses, as described in Section 4.6, and shall include a crisis communication protocol. The Crisis Communication Plan must be submitted to the City, in advance of any construction activities, for review and approval in accordance with Schedule 10 – Review Procedure.
- (b) The Crisis Communication Plan must be updated 30 days following a crisis event;
- (c) During the Project Term, DB Co shall:
- (i) provide ongoing assistance to the City in the City's development and updates to the Crisis Communication Plan;

- (ii) during a crisis situation, make available sufficient DB Co communications staff and Project resources in order to work effectively with the City to proactively manage and perform DB Co's communications responsibilities as set out in this Schedule 18; and
- (iii) during a crisis situation, provide the City with holding lines within 15 minutes of the event occurring.

4.5 Issues Management

- (a) During the Project Term, DB Co shall consult with and provide reasonable assistance to the City with respect to:
 - (i) identifying issues and trends as they emerge and develop strategies for tracking, addressing, mitigating, and minimizing issues related to the Project;
 - (ii) developing messages and strategies to address issues and provide accurate and timely information to affected Stakeholders; and
 - (iii) sharing information about potential issues related to the Project with other partners.
- (b) DB Co shall respond to all issues identified by the City within a timeframe as determined by the City for each issue.
- (c) DB Co shall develop an issues management protocol to be reviewed and approved by the City.

4.6 Media Relations

- (a) During the Project Term, DB Co shall:
 - (i) direct all media enquiries and interview requests to the City's lead communications contact, who will determine the organization that is most suitable to respond to the enquiry;
 - (ii) provide draft responses and messaging to the City, with respect to all media enquiries and interview requests in a timely manner and track each request that DB Co responds to in a media request log;
 - (iii) support the City with respect to all media enquiries and interview requests;
 - (iv) provide designated media relations staff (with backup media trained personnel, as required) with 24/7 availability to monitor, draft messaging and prepare responses to enquiries as requested by the City, in accordance with its level of urgency, as per the categories listed in Part 4.6(vii) below;
 - (v) provide communications training to DB Co staff, including refresher training regarding the City's communication protocols and policies for handling media, public, and Stakeholder interaction;

- (vi) make available a DB Co designated media relations staff member and construction manager or similar expert for the purposes of responding to technical matters related to media requests and interview requests if required and as requested by the City;
- (vii) provide the City with information as requested to respond to media inquiries and with the level of urgency defined by the City where the measure of the level of urgency and timelines is as detailed below:
 - (A) “Crisis” requires DB Co to provide a holding statement within 15 minutes, in line with the Crisis Communications Plan;
 - (B) “Urgent” is 1 hour;
 - (C) “Medium” is 6 hours; and
 - (D) “Low” is 24 hours; and
- (viii) at least twice-yearly, provide the City with a summary of key accomplishments in a media-ready format, that can be used by the City to approach media (summary of construction progress, benefits, local economic impacts, spotlight on innovation, look aheads, etc).

4.7 Government Reporting

- (a) During the Project Term, DB Co shall:
 - (i) support the City in meeting the requirements of the Governmental Authorities funding agreements for the Project by providing information about the Project status, upcoming milestones, and issues that may affect the Project including the provision of appropriate signage for construction and special events; and
 - (ii) participate in meetings with the City and Governmental Authorities when requested by the City.

4.8 Special Events, Site Tours and Trade Show

- (a) The City and DB Co shall collaborate to develop, plan, and coordinate various special events during the Project Term.
- (b) During the Project Term, DB Co shall:
 - (i) at the City’s request, make Project sites available for governmental, public relations, media and public tours and events such that the City may, upon advance notice to, and in conjunction with DB Co, organize special events, including tours of the Site and milestone celebrations, costs of which will be borne by the City, excluding costs related to shutdown of the Project Operations or accommodations at the Site to organize such events, which shall be borne by DB Co. DB Co shall support any event described in this Section 4.8(b) as requested by the City, and provide a power source for communications equipment, and any other associated site costs.

- (ii) ensure sufficient insurance and liability coverage is in place for any special events or venues, as required by the Project Agreement;
- (iii) make DB Co staff available for events, tours of the Site, and provide support as may be required by the City;
- (iv) develop content for events, as requested by the City, including but not limited to invitations, presentations, speaking notes, signage, high quality graphics, and other visuals;
- (v) support a minimum of two on-site full alignment tours (with Site access) and four special events per year;
- (vi) during the Construction Period and in consultation with the City, plan, organize and execute a trade show no later than 180 days following Financial Close. The City will develop templates for material to be used or displayed and will review and approve all materials to be distributed. The cost of the trade show will be borne by DB Co, including costs with respect to:
 - (A) renting the venue, tables, chairs;
 - (B) production of displays, invitations, signage and printed material;
 - (C) catering;
 - (D) print and radio advertising in trade and community and national media outlets as determined by the City;
 - (E) issuing invitations, tracking RSVPs and administering a survey;
 - (F) using best efforts to ensure a minimum attendance of 200 individuals, of which at least **[REDACTED]**% of attendees consist of industry vendors, suppliers and other Works-related businesses and contacts;
 - (G) providing overall event logistics and event production; and
 - (H) production of post-event report to the City, the content of which may be posted publicly to the City's website.

4.9 Stakeholder Events and Stakeholder Outreach Meetings

- (a) Stakeholder events include public information sessions and public open houses, where information is shared with a group, or community feedback is solicited and presented back to the community, and invitations to the public or a larger group are issued. DB Co shall:
 - (i) With respect to the Highway Works, DB Co shall hold events as required to fulfill the requirements of Schedule 17 – Environmental Obligations, including a minimum of one

event during design, and during Highway Works as required to communicate significant activities or changes and impacts, as requested by the City further to ongoing construction monitoring.

- (ii) hold a minimum of four events during design (presentation of bid designs), 30 events during pre-construction, and during construction as required to communicate significant activities or changes and impacts, as requested by the City further to ongoing construction monitoring; and
- (iii) during the Construction Period and in consultation with the City, support and organize and execute ongoing and unplanned Stakeholder special events, the costs of which will be borne by DB Co, including costs with respect to:
 - (A) developing content for all materials including, but not limited to, high-quality presentations, boards, invitations, handouts, post-event reports;
 - (B) developing high quality pop-up displays that speak to general project details, benefits, and construction timelines that can be used at all Stakeholder events updated for consultation events during design phase and pre-construction and construction outreach;
 - (C) developing high-quality community contact cards with information on project resources and key contacts during construction;
 - (D) covering the cost of print advertising in community newspapers, as described in this Schedule;
 - (E) at the City's discretion, distribute complete unaddressed mail drops to support these events; and
- (b) Stakeholder meetings include community presentations and project presentations. These are targeted meetings for a variety of audiences to resolve issues, and communicate general and/or specific project information to a targeted audience. DB Co shall provide technical staff as required, and provide content as required, including high-quality graphics.

4.10 Signage and Branding

(a) Construction and Promotional Signage

- (i) During the Project Term, DB Co shall:
 - (A) produce, print, install, and remove signage, including wayfinding and business signage;
 - (B) prior to installation, provide to the City for approval stamped shop drawings of the sign fabrication and installation details, together with a mock-up of the signage, location and confirmation of the applicable Permits, Licences, Approvals and Agreements;

- (C) ensure appropriate signage is provided in a visible location for affected businesses to seek to ensure continuity of their business operations, including compliance with the requirements of Schedule 15-2, Part 7, Article 6.
- (D) ensure that DB Co and DB Co Parties comply with the construction and promotional signage requirements set out in the Project Agreement;
- (E) ensure the government Project signs are visibly displayed along the corridor throughout the Project Term;
- (F) ensure that all signage is kept in good condition when installed and when not in use;
- (G) replace any signage that is damaged by DB Co at DB Co's expense;
- (H) provide screws, support posts and other fastening materials to install signage that are made of materials of good quality and durability;
- (I) remove graffiti on temporary signage within 24 hours or, in the event that graffiti cannot be removed by means of normal cleaning methods, DB Co shall replace the damaged signage;
- (J) upon request from the City, DB Co shall design and provide dimensions of hoarding, fencing and barriers to support temporary signage provided by the City; and
- (K) provide personnel to install, remove and relocate signage on an expedited basis, if required by the City.

(b) **Hoarding**

- (i) DB Co shall:
 - (A) develop a hoarding plan with the City that will respect various community contexts and build understanding and enhance the public image of the Project;
 - (B) as part of the hording plan, identify sites for the City's review and acceptance, where decorative hoarding would be beneficial and context-specific materials (scrim, metal sheets or plywood), and develop consistent hoarding design. Sites will include, but are not limited to:
 - 1) high visibility and/or high traffic (pedestrian, cycling or car);
 - 2) sites close to a community or greenspace being affected by Construction Activities; and
 - 3) sites in close proximity to businesses.
 - (C) produce, print, install, remove and store decorative hoarding, including wayfinding and business signage;

- (D) prior to installation, provide to the City for approval, stamped shop drawings of the decorative hoarding, fabrication and installation details, together with a mock-up of the decorative hoarding, location and confirmation of the applicable Permits, Licences, Approvals and Agreements;
 - (E) ensure that DB Co and DB Co Parties comply with the hoarding requirements set out in the Project Agreement;
 - (F) ensure that all decorative hoarding is kept in good condition when installed;
 - (G) replace any decorative hoarding that is damaged by DB Co at DB Co's expense; and
 - (H) remove graffiti on decorative hoarding within 24 hours or, in the event that graffiti cannot be removed by means of normal cleaning methods, DB Co shall replace hoarding at sites, to a maximum of five hoarding panel replacements per year, within a reasonable time period or as otherwise required by Applicable Law.
- (ii) The City shall develop the graphic design of the hoarding.

4.11 Advertising Communications and Marketing

- (a) During the Construction Period, the City shall:
- (i) provide DB Co with its plan detailing advertisement and communications marketing strategies for the Project;
 - (ii) provide DB Co with templates for use in drafting public notices and advertisements including Stakeholder engagement opportunities and construction impacts; and
 - (iii) review and approve advertisements produced by DB Co about the Project's design and construction impacts and Stakeholder engagement opportunities related to the Project.
- (b) During the Construction Period, DB Co shall:
- (i) support and contribute to the planning, development and execution of the City's public education and advertising campaigns related to the Works;
 - (ii) at DB Co's cost, plan, develop, and coordinate the placement of advertisements to communicate ongoing construction impacts and to inform Stakeholders of engagement activities through a mix of media, including but not limited to, print daily, community and commuter newspapers, radio, online media, multimedia and unaddressed mail in accordance with the following:
 - (A) for each of the 30 Stakeholder events described in Part 4 of this Schedule, DB Co shall provide one insertion in a local community or daily newspaper (black and white, half page in size);
 - (B) for construction notices that indicate significant, long-term construction impacts of

more than six months in duration, the frequency of the ads placed or notices issued will be based on the Construction Contractor's schedule and will include content for social media and City's regular communications channels (e.g. public service announcements), and could also include one local community or daily newspaper notice per major stage in work (black and white, quarter page in size); and

- (C) for significant construction impacts (defined by the City in the traffic notification process) that have a significantly high impact on traffic and mobility, DB Co is responsible for the production of and cost to book regular 15-second sponsor messages on weekdays, in the morning and afternoon peak commuter times. Radio ads will be played twice each hour between 6:00 a.m. and 10:00 a.m. in the morning and between 3:00 p.m. and 7:00 p.m. in the afternoon. Ads should appear on local radio stations of equal gross rating points to CFRB and/or CIHT (for radio).
- (iii) DB Co shall be responsible for the cost and coordination of Canada Post distribution of construction notices based on a 500 metre distribution area surrounding the area where the applicable Construction Activities are occurring; and shall:
 - (A) provide content for public information and Stakeholder engagement materials;
 - (B) write content for monthly newsletters about the Project, for review and approval of the City;
 - (C) use hoarding and any other areas within the Lands for communication of the Project; and
 - (D) not use, permit or authorize any third party to use any areas within the Lands for advertisement, without the prior written consent of the City, or as otherwise permitted in accordance with this Project Agreement;
- (iv) for clarity, DB Co shall submit all advertisements, insertions, construction notices, messages, and other associated documentation contemplated in this Section 4.10(b) for the City's review and approval prior to distributing, placing, posting, issuing, or producing any such advertisement, insertion, construction notice, message or any other documentation.

4.12 Project Identity and Graphic Design

- (a) The City shall develop the brand identity for the Project and provide templates to DB Co as required during the Construction Period.
- (b) During the Construction Period, DB Co shall:
 - (i) apply the City's design templates for information related to the Project and comply with Project identity standards on all information materials; and
 - (ii) provide all content and design layout of communication and community engagement materials, including quarterly newsletters, advertisements, public notices, flyers and publications to the City for review and approval at least three weeks prior to distribution.

4.13 Photography and Video

- (a) For the purposes of record-keeping and demonstrating the progress of the Project during the Construction Period, DB Co shall engage a professional photographer or field staff with appropriate equipment and training:
 - (i) on a regular basis and at least weekly, provide high-quality photographs, graphics and images of the Project to the City for use in publications, presentations and on public websites, using a professional DSLR or mirrorless type camera. Photographs must be sharp, high-quality digital JPEG files at 300 DPI with an 8-bit colour depth, preferably converted from RAW image format;
 - (ii) provide quality video clips of the Project to the City for use on Project websites and social media each month;
 - (iii) develop a promotional video during the design phase that incorporates information and visuals of the complete extension, including but not limited to station designs. Video should incorporate key facts of the project, objectives, and connections provided by the extensions (educational institutions, cultural institutions, recreation, retail destinations, etc.) with project objectives, stations renderings, project details and connectivity;
 - (iv) produce yearly, high-quality video during construction that incorporates visuals provided to the City with the objective of showing and highlighting construction progress; and
 - (v) cause DB Co staff or DB Co Parties to provide consent to City with respect to City's disclosure of photo and video content relating to the Project.
- (b) During the Project Term, DB Co shall, from time to time and as reasonably requested by the City, facilitate access for designated photographers and videographers.

4.14 Renderings

- (a) In addition to the renderings required in Schedule 10 – Review Procedure and Schedule 15-2, Part 4, Article 1 - Introduction, DB Co shall submit up to 10 additional photo-realistic renderings as requested by the City.

4.15 Complaints Protocols

- (a) During the Project Term, the City shall be responsible for approving all responses to complaints and enquiries relating to the Project, and will be the lead on their intake, and will lead on tracking.
- (b) During the Construction Period, DB Co shall:
 - (i) provide to the City for incorporation into the Construction Communications and Stakeholder Relations Plan, a complaints protocol addressing how DB Co will deal with and respond to enquiries, suggestions and complaints received with respect to the Project (the “**Construction Complaints Protocol**”) in an appropriate and timely manner, and

shall submit the Construction Complaints Protocol to the City for review and approval under the Schedule 10 – Review Procedure.

- (ii) be responsible for maintaining a software system that will track all complaints, enquiries, suggestions, and responses received with respect to the Project;
 - (iii) provide monthly complaint reports to the City, including an analysis of the main areas of concern to complainants; and
 - (iv) coordinate DB Co's complaint tracking and complaint reports with any internal complaint tracking or complaint reports established by the City with respect to the Project, as requested by the City.
- (c) DB Co acknowledges and agrees that the Construction Complaints Protocol will be publicly available at the request of the City.

4.16 Communications Performance Monitoring and Auditing

- (a) DB Co shall prepare a communications performance report ("**Communications Performance Report**") which shall be available for review each month in advance of the first Communications and Stakeholder Engagement Working Group weekly meeting for the month, as detailed in Section 6 of this Schedule. The Communications Performance Reports shall:
- (i) be in a format agreed to by the City; and
 - (ii) summarize DB Co's performance through the various communications activities in support of and execution of the protocols, strategies and plans developed for the Project.
- (b) DB Co shall develop an annual performance report, based on a template approved by the City, that summarizes the monthly reports and assesses DB Co's overall compliance with Schedule 18 obligations. The annual yearly performance report shall be submitted to the City in accordance Schedule 10 – Review Procedure.

PART 5 NOTIFICATION

5.1 General

- (a) With respect to Construction Activities that are reasonably anticipated to have a major impact on third party property owners, DB Co shall:
 - (i) provide Notice to the City of such Construction Activities at least two weeks prior to the commencement of such Construction Activities; and
 - (ii) provide a draft public notification at least two weeks prior to the commencement of such Construction Activities to the City for review and approval.

The draft notices provided by DB Co in accordance with this Section 5.1(a) shall include a comprehensive list of the elements owned by a third party which DB Co anticipates will have to be removed or relocated by the property owner, what elements can remain on the property, detailed drawings that describes the proposed Construction Activities (including new location of relocated items or impacts that might result from the Construction Activities and restoration plans), proposed timeline for Construction Activities (including duration and anticipated completion), contact information to obtain additional information, and any updates or complaints relating to such Construction Activities.

- (b) With respect to Construction Activities that are reasonably anticipated to have a major impact on transit users, pedestrians, residents, traffic, and/or Stakeholders generally, DB Co shall:
 - (i) provide Notice to the City of such Construction Activities at least 35 days prior to the commencement of such Construction Activities; and
 - (ii) provide a draft public notification at least 35 days prior to the commencement of such Construction Activities to the City for review.

For the purposes of this Section 5.1(b), “major impact” shall include but not be limited to overnight construction, temporary Construction Activities, final paving, commissioning activities, privately-owned elements to be relocated or removed by DB Co, and transit stop relocations.

- (c) With respect to Construction Activities that are reasonably anticipated to have a medium impact on transit users, pedestrians, residents, traffic, and/or Stakeholders generally, DB Co shall:
 - (i) provide Notice to the City of such Construction Activities at least 15 Business Days prior to the commencement of such Construction Activities; and
 - (ii) provide a draft public notification at least 10 Business Days prior to the commencement of such Construction Activities to the City for review.

For the purposes of this Section 5.1(c), “medium impact” shall include but not be limited to, major intersection work, any disruption to water, gas and/or other utilities, and impacts from noise or dust. For clarity, the notification provided by DB Co pursuant to Section 5.1(c)(ii) shall be delivered by DB Co on behalf of the City to all affected properties and in consultation with

Utility Companies, as applicable.

- (d) With respect to Construction Activities that are reasonably anticipated to have a minor impact on transit users, pedestrians, residents, traffic and/or Stakeholders generally, DB Co shall:
 - (i) provide Notice to City of such Construction Activities at least five Business Days prior to the commencement of such Construction Activities; and
 - (ii) provide a draft public notification at least 48 hours prior to the commencement of such Construction Activities to the City for review.

For the purposes of this Section 5.1(d), “minor impact” shall include short-term lane closures, minor pedestrian detours, and access and driveway work. DB Co shall ensure that access is maintained to properties impacted by the Construction Activities at all times.

- (e) With respect to an incident related to Construction Activities that are reasonably anticipated to have an impact on DB Co employees and contractors, transit users, pedestrians, residents, traffic and/or Stakeholders generally, and with respect to which DB Co cannot reasonably provide advance notice of any kind to the City or the public (a “**Construction Activities Incident**”), DB Co shall:
 - (i) immediately notify the City of such Construction Activities Incidents;
 - (ii) provide a draft public notification or messaging no later than 15 minutes following the commencement of such Construction Activities Incidents to the City for review;
 - (iii) be prepared to provide a public statement with respect to the Construction Activities Incidents at the request of the City; and
 - (iv) be prepared to enact the Crisis Communications Plan in consultation with the City and to react quickly to provide an immediate response to all affected Stakeholders.

For the purposes of this Section 5.1(e), a Construction Activities Incident shall include but not be limited to an accident on site or a major catastrophe.

- (f) The notifications provided by DB Co pursuant to this Section 5.1, once finalized by the City, shall be delivered by DB Co on behalf of the City to all affected properties and in consultation with Utility Companies, as applicable.

PART 6 COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT WORKING GROUP

6.1 Communications and Stakeholder Engagement Working Group

- (a) DB Co shall provide staff to support the communications and Stakeholder engagement activities related to the Project. These DB Co staff along with identified City communications and Stakeholder engagement staff, will form a Communications and Stakeholder Engagement Working Group (the “**Communications and Stakeholder Engagement Working Group**”).
- (b) The leads on the Communications and Stakeholder Engagement Working Group representing both the City and DB Co will be members of the Works Committee to ensure that communications and Stakeholder relations issues as part of the Project are addressed in an efficient and effective manner.
- (c) The objective of the Communications and Stakeholder Engagement Working Group is for DB Co and the City to work together to develop and implement all communications plans and Stakeholder engagement and community engagement activities for the Project to:
 - (i) ensure timely, open, transparent, effective, consistent and proactive communications with Stakeholders and elected officials;
 - (ii) foster and maintain positive and constructive relationships with neighbourhoods, agencies and businesses that may be affected by decisions regarding the scope of the Project as well as Construction Activities; and
 - (iii) build trust and maximize Stakeholder understanding and support for the Project.
- (d) DB Co shall ensure that the Construction Manager, Design Manager and any other staff from DB Co or any DB Co Party that the City may require, are made available to support the Communications and Stakeholder Engagement Working Group as required.
- (e) Within 60 days following Financial Close, the Communications and Stakeholder Engagement Working Group will convene to discuss the communications and Stakeholder engagement obligations and to identify the working relationships, roles, responsibilities, deliverables and review approvals processes for the Project.
- (f) The Communications and Stakeholder Engagement Working Group will meet once per week throughout the Construction Period, or less frequently as agreed to by the City, to plan and implement communications and Stakeholder engagement strategies for the Project, share information, discuss community relations updates, identify and plan for communications, Stakeholder engagement and Project milestones, manage issues and receive schedule updates.

PART 7 PUBLIC DISCLOSURE AND MEDIA RELEASES

7.1 Public Disclosure and Media Releases

- (a) Neither DB Co nor any DB Co Parties shall issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, the Project Agreement, the City's activities or any related matters, without the prior written consent of the City.
- (b) Neither DB Co nor any DB Co Parties shall issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) making any implicit or explicit reference to RTG, any RTG Party or any affiliate of RTG or any RTG Party, whatsoever, without prior written consent from RTG.
- (c) Neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, the Project Agreement, the City's activities or any matter related thereto, without the prior written consent of the other Party.
- (d) DB Co shall comply and shall ensure that all DB Co Parties comply, at all times, with the City's media release and publicity protocols or guidelines, as such protocols and/or guidelines may be updated by the City from time to time.

PART 8 PERFORMANCE CRITERIA

8.1 Application of Performance Criteria

- (a) DB Co shall comply with the Construction Period Performance Criteria in respect of this Schedule 18 set out in Attachment E of Schedule 21 – Construction Period Payments.

SCHEDULE 19

PROCUREMENT MONITORING AND IMPLEMENTATION PLAN

[REDACTED]

**SCHEDULE 20
LANDS**

PART A – DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1 For the purposes of the Project Agreement, including but not limited to this Schedule 20, the following terms have the following meanings. Any capitalized term not defined in this Schedule 20 shall have the meaning given to such term in the Project Agreement.

- (a) **“Additional Property Interest”** includes any additional parcel of land not forming part of the Lands, the expansion or alteration of any boundary of any parcel of land forming part of the Lands, the extension of any term of use of any parcel of land forming part of the Lands beyond the term specified in the column marked “Duration” in the Lands Table and the inclusion of additional Permitted Uses for any parcel of land forming part of the Lands all as requested by DB Co in accordance with Section 8 of this Schedule 20 unless and until such parcel, extension, extended term or additional Permitted Use becomes part of the Lands and is included in the grant of the non-exclusive licence described in Section 16.1 of the Project Agreement in accordance with Section 16.7 of the Project Agreement;
- (b) **“City Road Allowance Lands”** means lands forming part of a municipal road having the status of a highway pursuant to Section 26 of the *Municipal Act, 2001* R.S.O. c.25. Within the Lands Table, property comprising City Road Allowance Lands are designated **“ROW”** in the column marked “Restrictions and Requirements”;
- (c) **“Commencement Date”** means, with respect to each parcel of property forming part of the Lands, either:
 - (i) the date identified in the column marked “Commencement Date” in the Lands Table; or,
 - (ii) the first day of the month following the occurrence of the event described in the column marked “Commencement Date” in the Lands Table (for example, Financial Close); or,
 - (iii) for lands designated City Road Allowance Lands (ROW) or Highway Corridor Lands (HCL), the date(s) specified in required permits, approvals or authorizations as described in Section 5 of this Schedule 20 and in Schedule 35 – Permits, Licenses, Approvals and Agreements;

and is the date upon which any parcel of land identified in the Lands Table becomes part of the Lands and is included in the non-exclusive licence granted by the City to DB Co in accordance with Section 16.1 of the Project Agreement;

- (d) **“Existing LRT Infrastructure Lands”** means lands shown on Property Request Plans identified as **“Stage 1 PRPs”** and included in a folder titled “Stage 1 PRPs” located in the Data Room, which are lands owned by the City, or lands in which the City has acquired an interest, and upon which Existing Infrastructure or Stage 1 Connection Infrastructure comprised of light rail transit system infrastructure and/or related infrastructure which is, has been or will be designed, constructed, operated and/or maintained by RTG and/or the RTG Parties is located. Existing LRT

Infrastructure Lands do not form part of the “Lands” except to the extent that they are also included in the Lands Table;

- (e) **“Highway Corridor Lands”** means lands forming part of the controlled access highways known as Highway 417 and Highway 416 and owned by the MTO which are designated **“HCL”** in the column marked “Restrictions and Requirements” in the Lands Table;
- (f) **“Lands”** means lands owned or to be acquired by the City or lands in respect of which the City has acquired or will acquire certain rights, all as set out in the Lands Table or otherwise deemed to be lands in accordance with this Schedule 20, and over which the City is granting to DB Co a non-exclusive license, right of use and access in accordance with Section 16.1 of the Project Agreement;
- (g) **“Lands Table”** means the table in Part B of this Schedule 20;
- (h) **“Optional Lands”** means property identified by DB Co during the procurement process which DB Co requested be included in the Lands, which the City agreed to make available to proponents and which DB Co requested be included in the Lands subject to the provisions of Section 8.2 with necessary amendments as described in Section 8.3 of this Schedule 20.
- (i) **“Permitted Use”** or **“Permitted Uses”** means the use(s) which may be put to each parcel forming part of the Lands as designated in the column marked “Permitted Use” in the Lands Table being one or more of the following:
 - (i) **“New MTO Infrastructure Lands”** means property forming part of the Lands and designated **“NMTOI”** in the column marked “Permitted Use” in the Lands Table representing the location where New MTO Infrastructure is to be constructed or installed in accordance with Schedule 15 – Output Specifications.
 - (ii) **“New Municipal Infrastructure Lands”** means property forming part of the Lands and designated **“NMI”** in the column marked “Permitted Use” in the Lands Table representing the location where New Municipal Infrastructure is to be constructed or installed in accordance with Schedule 15 – Output Specifications;
 - (iii) **“System Infrastructure Lands”** means property forming part of the Lands and designated **“SI”** in the column marked “Permitted Use” in the Lands Table representing the location where System Infrastructure is located or is to be constructed or installed in accordance with Schedule 15 – Output Specifications;
 - (iv) **“Temporary Access Lands”** means property forming part of the Lands and designated **“TA”** in the column marked “Permitted Use” in the Lands Table which may be used temporarily for the sole purpose of providing non-exclusive pedestrian and/or vehicular access to other property forming part of the Lands;
 - (v) **“Temporary Mobilization Lands”** means property forming part of the Lands and designated **“TM”** in the column marked “Permitted Use” in the Lands Table which may be used as part of a mobilization site or staging area, being a designated area where personnel, equipment, supplies, site offices and other facilities required to undertake the Construction Activities are established and maintained in accordance with the provisions of Schedule 15 – Output Specifications relating to mobilization sites; and

- (vi) **“Temporary Construction Lands”** means property forming part of the Lands and designated **“TC”** in the column marked **“Permitted Use”** in the Lands Table which may be used temporarily in connection with the construction of System Infrastructure, New Municipal Infrastructure, and/or New MTO Infrastructure but which may not be used as part of a mobilization site or staging area other than for short term storage of mobile equipment and material required for construction in close proximity to the relevant parcel of Temporary Construction Lands.
- (j) **“Property Request Plan”** or **“PRP”** means a diagram defining the extent, limits and/or approximate boundaries of property; and,
- (k) **“Third Party Access Agreements”** means the agreements, including Standard Agreements, listed or described in Section 4.1 of this Schedule 20.

2. TERM

- 2.1** The term of the non-exclusive licence to any parcel forming part of the Lands granted to DB Co by the City in accordance with Section 16.1 of the Project Agreement shall run from the Commencement Date identified in the Lands Table for such parcel until the earlier of:
- (a) the end of the period calculated by adding to the Commencement Date the number of months specified for each parcel in the column marked **“Duration”** in the Lands Table;
 - (b) the applicable Final Completion Date; and
 - (c) the Termination Date.

2.2 Unless otherwise stated in the Lands Table, the number of months identified in the column marked “Duration” in the Lands Table, represents a single term comprised of consecutive months commencing on the Commencement Date.

3. PERMITTED USES

3.1 DB Co’s use of any parcel forming part of the Lands shall be limited to the Permitted Use(s) designated in the column marked “Permitted Use” in the Lands Table.

3.2 The installation or construction of New Municipal Infrastructure in or on any parcel of lands designated New Municipal Infrastructure Lands may be limited to the construction or installation of the type(s) of infrastructure specified in the “Restrictions and Requirements” column of the Lands Table and/or in the Third Party Access Agreement(s) applicable to such parcel.

3.3 The installation of temporary excavation supports such as rock bolts, rock dowels, tie backs, soldier piles or secant piles any part of which will be left in place following completion of construction is only permitted in accordance with Section 3.4, within System Infrastructure Lands, or within Temporary Construction Lands if such Temporary Construction Lands have been expressly identified as being available for temporary excavation support.

3.4 Except as provided in this Section 3.4 or as expressly provided elsewhere in the Project Agreement, all Works shall take place exclusively within the boundaries of the Lands.

(i) Subject to the requirements of Section 5.1 of this Schedule 20 and Schedule 35 with respect to the use of City Road Allowance Lands, DB Co may:

(A) construct or install New Municipal Infrastructure within City Road Allowance Lands; and/or,

(B) install temporary excavation supports such as rock bolts, rock dowels, tie backs, soldier piles and secant piles within City Road Allowance Lands; and/or,

(C) use City Road Allowance Lands for the purposes of managing traffic in accordance with a Traffic Management Plan,

irrespective of whether the City Road Allowance Lands required for the purposes listed above are described in the Lands Table or in the PRPs.

(ii) Subject to the requirements of Section 5.2 of this Schedule 20 and Schedule 35 with respect to the use of Highway Corridor Lands, DB Co may install rock bolts and rock dowels within Highway Corridor Lands for the purposes of providing temporary subterranean support of excavation irrespective of whether the Highway Corridor Lands required for these purposes are described in the Lands Table or in the PRPs.

(iii) In addition to Section 3.4(i)(B) which permits the installation of temporary excavation supports such as rock bolts, rock dowels, tie backs, soldier piles and secant piles within City Road Allowance Lands, such supports may also be installed in accordance with a licence acquired by DB Co on its own behalf in accordance with Section 16.7(c) of the Project Agreement or by the City in accordance with Section 8 of this Schedule 20.

- (iv) The Lands Table and PRPs do not describe property required to accommodate Utility Works. Without limiting the provisions of the Project Agreement, including Section 8, Part 2, Schedule 15-2, which govern Utility Works, and subject to the requirements of Section 5.1 and 5.2 of this Schedule 20 and Schedule 35 with respect to the use of City Road Allowance Lands and Highway Corridor Lands, DB Co may undertake Utility Works within System Infrastructure Lands, City Road Allowance Lands, Highway Corridor Lands or in accordance with the terms of an existing easement in favour of the relevant Utility Company.
- (v) Utility Works will not be permitted on property other than System Infrastructure Lands, City Road Allowance Lands, Highway Corridor Lands or within the boundaries of and in accordance with the terms of an existing easement in favour of the relevant Utility Company unless and until a new easement over such property in favour of the relevant Utility Company, and satisfactory to the relevant Utility Company, is acquired by DB Co or by the City.
- (vi) New easements for Utility Works contemplated in Section 3.4(v) above shall be acquired by DB Co in accordance with Section 16.7(c) of the Project Agreement or by the City as Additional Property Interests in accordance with Section 8 of this Schedule 20, the costs of which acquisitions are to remain to DB Co's sole account not to be recovered through any Cash Allowance.
- (vii) Notwithstanding Section 3.4 (vi) above, the following exceptions to the provisions of Section 8 of this Schedule 20 shall apply to requests for Additional Property Interests made by DB Co with respect to new easements for Utility Company Self-Performed Works which are required solely as a result of Utility Agreements for Utility Company Self-Performed Work approved by the City in accordance with Section 11.29 of the Project Agreement:
 - (A) Section 8.1(a) shall not apply and a request may be made at any time during the Project Term;
 - (B) Sections 8.1(c), 8.1(d), 8.1(e), 8.1(f) and 8.1(g) shall not apply with the exception that, within fifteen (15) Business Days of the delivery by DB Co to the City of the materials described in Section 8.1(b), the City shall provide to DB Co an approximate estimate of the time which the City anticipates will be required to secure the required easement;
 - (C) Sections 8.2(b), 8.2(c), 8.2(e) and 8.2(f) shall not apply and the City shall use all reasonable efforts to complete the acquisition of the new easement with all due dispatch.

- 3.5 To the extent that DB Co undertakes, in accordance with Sections 3.4(i), 3.4(ii) 3.4(iii), 3.4(iv), and/or 3.4(v) above, any Works, Utility Company Self-Performed Work or traffic management on lands comprising City Road Allowance Lands, Highway Corridor Lands, or in accordance with the terms of a licence or easement acquired by DB Co pursuant to Section 16.7(c) of the Project Agreement or existing easements in favour of relevant Utility Companies, which lands are not identified in the Lands Table and PRPs, all of DB Co's obligations and liabilities in respect of the Lands and Site under the Project Agreement shall apply with equal effect to all activities of DB Co and DB Co Parties on such lands.

4. RESTRICTIONS AND REQUIREMENTS

- 4.1 In addition to any other restriction or requirement contained in the Project Agreement, including this Schedule 20 and Schedule 15- Output Specifications and Schedule 16 - Encumbrances, DB Co's access to and use of the Lands for the purposes of the Construction Activities is subject to the terms of the Third Party Access Agreements and other restrictions, qualifications and requirements contained in the Lands Table including as set out in the column marked "Restrictions and Requirements" including as described below:
- (a) "[REDACTED] Lease Terms" designates property, the use of which is subject to the terms and conditions of a lease between [REDACTED] and the City of Ottawa a copy of which is located in a file folder titled "Agreements" and located in the Data Room;
 - (b) "Algonquin College Terms" designates property, the use of which is subject to the terms and conditions of the agreement between the City and Algonquin College a copy of which is located in a file folder titled "Agreements" and located in the Data Room;
 - (c) "Existing LRT Infrastructure Lands Constraints" designates property which includes, abuts or is in close proximity to Existing System Infrastructure Lands where coordination with RTG and/or the RTG Parties may be required in accordance with the Interface Agreement and the terms of this Project Agreement;
 - (d) "HONI Terms" designates property forming part of an electricity transmission or distribution corridor. The use of such lands may be subject to approvals pursuant to the provincial secondary land use program jointly administered by Infrastructure Ontario and Hydro One Networks Inc. and is also subject to the terms and conditions of a Standard Agreement comprising a grant of an easement or licence, by Her Majesty the Queen in right of Ontario as represented by the Ontario Infrastructure Lands Corporation to the City, to construct, use and maintain infrastructure within lands forming part of an electricity transmission or distribution corridor or to make temporary use of such lands for the purpose stipulated in the grant of easement or licence;
 - (e) "[REDACTED] Terms" designates property, the use of which is subject to the terms and conditions of the agreement between the City and [REDACTED] a copy of which is located in a file folder titled "Agreements" and located in the Data Room;
 - (f) "MTO Terms" designates property, the use of which is subject to the terms and conditions of a Standard Agreement comprising an encroachment permit granted by the MTO to the City with respect Highway Corridor Lands;
 - (g) "NCC Terms & Conditions" designates property, the use of which is subject to the terms and conditions of agreements between the City and the National Capital Commission copies of which

are located in a file folder titled “Agreements” and located in the Data Room as well as the conditions of the Approvals in Principle issued by the National Capital Commission and any Federal Land Use Design and Transaction Approvals granted by the National Capital Commission with respect to the Project or any part thereof;

- (h) **“Parkland Improvement Works”** designates property to be improved with New Municipal Infrastructure being constructed by DB Co for the benefit of the National Capital Commission in accordance with Schedule 15 – Output Specifications and NCC Terms and Conditions;
- (i) **“[REDACTED] Terms”** designates property, the use of which is subject to the terms and conditions of the agreement between the City and [REDACTED] a copy of which is located in a file folder titled “Agreements” and located in the Data Room;
- (j) **“PWGSC Terms”** designates property, the use of which is subject to the terms and conditions of the agreement between the City and Her Majesty the Queen as represented by Public Works and Government Services Canada a copy of which is located in a file folder titled “Agreements” and located in the Data Room;
- (k) **“SOD Parcel”** designates property which has been identified by the City as a property where station oriented development is expected and where the City will provide opportunities for real estate development immediately above and/or integrated with a rail transit station, including but not limited to the sale of air rights above a rail transit station; and,
- (l) **“Stratified Parcel”** designates property having both horizontal and vertical boundaries.

The forgoing does not constitute an exhaustive list of the restrictions and requirements which may be listed in the column designated “Restrictions and Requirements” in the Lands Table or which may apply to any property forming part of the Lands.

4.2 All of the agreements referred to in Section 4.1 above, including the Standard Agreements, shall be treated, for the purposes of Section 17 of the Project Agreement and for the purpose of Schedule 16 – Encumbrances, as Encumbrances of which DB Co had knowledge prior to Financial Close. While the City has made efforts to incorporate significant construction, maintenance and other obligations flowing from the Third Party Access Agreements into the Project Agreement, DB Co shall be deemed to have reviewed each of the Third Party Access Agreements and shall perform all obligations and observe and comply with all restrictions contained therein which are relevant to the use of any part of the Lands and/or the performance of the Construction Activities.

4.3 Notwithstanding Section 4.2 above, to the extent that any of the agreements listed in Section 4.1 provide for the payment of a purchase price, licence fee, rent, or other consideration in exchange for the transfer from a third party property owner to the City of property, an interest in property or a contractual right to use property forming part of the Lands, such purchase price, licence fee, rent, or other consideration shall be paid by the City and not by DB Co, except to the extent that such purchase price, licence fee, rent, or other consideration is paid with respect to an Additional Property Interest, other than an Additional Property Interest acquired subject to the exception described in Section 3.4(vii) of this Schedule 20.

4.4 STANDARD AGREEMENTS

(a) For certain parts of the Lands the City will enter into easement, licence, or similar agreement(s) after Financial Close. The City intends to enter into such agreement(s) on substantively the same terms and conditions as an existing easement, licence or similar agreement that has been entered into by the City and that is provided as Background Information prior to Financial Close or are currently contemplated in the “Restrictions and Requirements” column of Part B (the “**Standard Agreements**”) copies of which are included in the folder titled “Agreements” in the Data Room. If, after Financial Close,

- (i) the City enters into one or more easement, license or similar agreement(s) in respect of any part of the Lands; or
- (ii) the City acquires any interest in or right to use any part of the Lands subject to any easement, license or similar agreement(s),

and such agreement(s) have substantively the same terms and conditions as the Standard Agreements, such agreement(s) shall be treated, for the purposes of Section 17 of the Project Agreement and for the purpose of Schedule 16 – Encumbrances, as though DB Co had knowledge of such agreements prior to Financial Close. This Section 4.4 shall not apply in circumstances where the City enters into an easement, license, or similar agreement after Financial Close on terms and conditions materially different from the Standard Agreement if such material differences cause a delay to DB Co in performing the Construction Activities, create additional material obligations or liabilities for DB Co, or cause a material increase in cost to DB Co, except to the extent that such easement, license or agreement relates to an Additional Property Interest, in which case the provisions of Section 8 of this Schedule 20 shall apply unless the Additional Property Interest is acquired subject to the exception described in Section 3.4(vii) of this Schedule 20.

5. USE OF CITY ROAD ALLOWANCE LANDS, HIGHWAY CORRIDOR LANDS AND TRANSMISSION CORRIDOR LANDS

5.1 City Road Allowance Lands

The use of City Road Allowance Lands or any part thereof by DB Co, including but not limited to the term of such use and the date upon which DB Co may commence any Construction Activities on City Road Allowance Lands or any part thereof is subject to the terms of required permits and approvals, including Road Cut Permits and Temporary Construction-Related Encroachment Permits, to be obtained by DB Co in accordance with Schedule 35 – Permits, Licenses, Approvals and Agreements.

5.2 Highway Corridor Lands

The use of Highway Corridor Lands by DB Co, including but not limited to the term and extent of such use and the date upon which DB Co may commence any Construction Activities on the Highway Corridor Lands is subject to MTO Terms including the requirement for DB Co to obtain from the MTO authorization to access the Highway Corridor Lands in accordance with the process established by the MTO.

5.3 Electricity Transmission/Distribution Corridor Lands

The use by DB Co of lands designated as being subject to HONI Terms, including but not limited to the term and extent of such use and the date upon which DB Co may commence any Construction Activities on such lands, is subject to HONI Terms including the requirement for approvals under the provincial secondary land use program as described in Schedule 35.

6. REPORT CARD PROCEDURE – TEMPORARY USE LANDS

Without altering DB Co's obligations to landscape, restore, remediate and/or reinstate the Lands or adjacent lands in accordance with the Project Agreement, including in accordance with Section 18.2 of the Project Agreement, Schedule 15 - Output Specifications and Schedule 17 – Environmental Obligations, for all parcels forming part of the Lands which are designated in the "Restrictions and Requirements" column of the Lands Table as a "**Report Card Parcel**", DB Co shall comply with the protocol described in this Section 6.

6.1 Report Card

Following the completion by DB Co of all Construction Activities on any Report Card Parcel, and at least thirty (30) days prior to the end of the term of use of such Report Card Parcel as specified in the Lands Table, DB Co shall submit to the City, as part of the Monthly Environmental Report required pursuant to Section 3.9(b) of Schedule 17 – Environmental Obligations, a summary report card in the form attached in Part C of this Schedule 20 together with the attachments set out therein for each Report Card Parcel (a "**Report Card**").

6.2 City Review of Report Card

Within twenty five (25) days of receipt of a Report Card, the City shall notify DB Co if the City, has an objection to the information contained in, or the steps taken by DB Co as set out in the Report Card, or requires additional environmental investigations in accordance with Section 18.2 of the Project Agreement and/or Schedule 17 – Environmental Obligations.

6.3 Remediation and Reinstatement

The remediation of any Contamination and/or reinstatement of any property which DB Co is required to undertake in accordance with Section 18.2 of the Project Agreement, Schedule 15 – Output Specifications and/or Schedule 17 – Environmental Obligations shall be completed prior to the expiry of the term of use for such property as specified in the Lands Table failing which, in addition to any other obligations of DB Co contained in the Project Agreement, DB Co shall be responsible for indemnifying and/or reimbursing the City with respect to all costs, claims and/or damages incurred by the City as a result of any failure to return possession of the property to the owner of the property prior to the end of the term of use described in the Lands Table.

7. ENVIRONMENTAL INVESTIGATION REPORTS

Information regarding the environmental condition of parts of the Lands, including information about Contamination on, in, under or migrating from parts of the Lands, is contained in the Background Information. In some instances, additional site specific environmental investigation reports have been included in the Background Information, in which case the City has made efforts to reference relevant Property Request Plans in Schedule 17 – Environmental Obligations; however, the inclusion of Property Request Plan references in Schedule 17 – Environmental Obligations shall in no way limit DB Co's obligations pursuant to Section 18.2 of the Project Agreement.

8. ADDITIONAL PROPERTY INTERESTS

8.1 Requests for Additional Property Interests

The following provisions shall be in addition to Section 16.7 of the Project Agreement governing requests for Additional Property Interests by DB Co.

- (a) The City will only consider requests for Additional Property Interests:
 - (i) During the sixty (60) day period commencing three (3) months following Financial Close (the “**First Additional Property Interests Request Period**”);
 - (ii) During the sixty (60) day period commencing twelve (12) months following Financial Close (the “**Second Additional Property Interests Request Period**”);
 - (iii) During the sixty (60) day period commencing twenty four (24) months following Financial Close (the “**Third Additional Property Interests Request Period**”); and,
 - (iv) During the sixty (60) day period commencing thirty-six (36) months following Financial Close (the “**Final Additional Property Interests Request Period**”).
- (b) Every request for Additional Property Interests submitted by DB Co shall:
 - (i) include a Property Request Plan prepared by DB Co at DB Co's cost describing the Additional Property Interest, including stratification if appropriate;
 - (ii) state the proposed Commencement Date and duration for the Additional Property Interest;

- (iii) detail DB Co's reasons for requesting the Additional Property Interest and provide a drawing or sketch describing the horizontal and vertical dimensions of any System Infrastructure, New MTO Infrastructure, New Municipal Infrastructure and/or other infrastructure to be installed and/or constructed by DB Co within the boundaries of the Additional Property Interest; and
 - (iv) indicate all reasonably foreseeable implications of acquiring the Additional Property Interest, including whether the acquisition of the Additional Property Interest is expected to result in cost savings for the City from a design, engineering or construction perspective.
- (c) DB Co shall pay to the City, in respect of any request for an Additional Property Interest, an administration fee calculated as follows:
 - (i) For each Additional Property Interest requested during the First Additional Property Interests Request Period, a fee of [REDACTED] Dollars, (\$[REDACTED]); and,
 - (ii) For each Additional Property Interest requested following the First Additional Property Interests Request Period, a fee of [REDACTED] Dollars, (\$[REDACTED]).
- (d) As soon as practicable and in any event within 15 Business Days after receipt of a request for Additional Property Interests, the City shall decide whether or not it is prepared to consider the request and shall either advise DB Co that it has elected not to consider the request or shall deliver to DB Co an approximate estimate of:
 - (i) the time which the City anticipates will be required to secure the Additional Property Interest; and
 - (ii) the anticipated cost of acquiring the Additional Property Interest.

The foregoing approximate estimates shall be in no way binding upon the City and shall not limit DB Co's obligations in Section 8.2(c).
- (e) DB Co acknowledges and agrees that any decision of the City pursuant to Section 8.1(d) above shall be final and binding on the Parties and in the event that the City elects not to consider the acquisition of any Additional Property Interest, DB Co acknowledges and agrees that the City's decision shall not be subject to resolution pursuant to Schedule 27 – Dispute Resolution Procedure.
- (f) If the City, in its sole discretion, elects to consider a request for an Additional Property Interest, the City shall be entitled to retain the administration fee payable in respect of such request for such Additional Property Interest in accordance with Section 8.1(c) above. Such fees are in addition to the costs payable by DB Co in accordance with Section 8.2(c) below and the City shall have no obligation to refund any part of such administrative fee whether or not the request for Additional Property Interests is withdrawn by DB Co as contemplated in 8.1(g)(i) below or whether or not the Additional Property Interest is acquired or accepted as part of the Lands for any reason whatsoever.
- (g) As soon as practicable, and in any event within 15 Business Days after the later of the date the estimate described in Section 8.1(d) above was delivered, DB Co shall either:

- (i) withdraw its request for the Additional Property Interest by written notice to the City; or
- (ii) issue a written confirmation directing the City to proceed with the acquisition of the Additional Property Interest.

If DB Co does not issue the confirmation described in Section 8.1(g)(ii) within such 15 Business Days, then, the request for Additional Property Interests shall be deemed to have been withdrawn. If DB Co does issue the confirmation described in Section 8.1(g)(ii) within such 15 Business Days, the City shall, subject to the provisions of Section 8.2 below, proceed with the acquisition of the Additional Property Interest.

8.2 Acquisition of Additional Property Interests

- (a) Notwithstanding anything to the contrary in the Project Agreement, the City's failure to acquire any Additional Property Interest, or its failure to acquire any Additional Property Interest on or prior to the Commencement Date proposed by DB Co, shall not constitute a Delay Event, a Compensation Event, a Relief Event or a City Event of Default under the Project Agreement.
- (b) The City shall be entitled to abandon the acquisition of any Additional Property Interest at any time, for any reason and in its sole and absolute discretion, in which case the Additional Property Interest will not form part of the Lands and will not be included in the non-exclusive licence granted to DB Co in accordance with Section 16.1 of the Project Agreement.
- (c) DB Co shall be responsible for all costs and expenses incurred by the City in connection with the acquisition of any Additional Property Interest, irrespective of whether the acquisition of the Additional Property Interest is completed and irrespective of whether the Additional Property Interest is acquired by negotiation or expropriation, including but not limited to all consideration paid to the owner, legal costs, including legal costs incurred by the City and third party legal costs, land surveying and appraisal costs, including third party land surveying and appraisal costs, administrative costs, the market value of the Additional Property Interest, disturbance damages, injurious affection and any and all compensation payable under the *Expropriations Act*, R.S.O. 1990, c. E. 26, if applicable, and the City shall be entitled, in accordance with Section 4.8 of the Project Agreement, to set off any such costs and expenses against any amounts otherwise due to DB Co pursuant to the terms of this Project Agreement.
- (d) Notwithstanding any provision of the Project Agreement to the contrary, including but not limited to Section 18.2, 18.3, and 18.4 of the Project Agreement, DB Co shall be responsible for any Contamination on, in or under, or migrating to or from any new parcel of land or any addition to any parcel forming part of the Lands acquired by the City as an Additional Property Interest, and for any Species-at-Risk, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites which may be found on or at any new parcel of land or any addition to any parcel forming part of the Lands acquired by the City as an Additional Property Interest. DB Co may request the opportunity to undertake additional investigations with respect any Additional Property Interest and, if such additional investigations are undertaken, DB Co shall provide the results of such investigations to the City before the City completes the acquisition of the Additional Property Interest. In the event that the City is unable to obtain the consent of the relevant property owner with respect to any additional investigation requested by DB Co pursuant to this Section 8.2(d), the City shall notify DB Co that it is unable to obtain the required consent, in which case DB Co may, subject to its obligations in Section 8.2(c), direct the City to abandon the acquisition of the relevant Additional Property Interest.

Subject to this Section 8.2(d), the City shall have no obligation to conduct any investigation in connection with the acquisition of an Additional Property Interest.

- (e) The terms of any agreement, or amendment to an existing agreement, negotiated by the City with respect to the acquisition of any Additional Property Interest shall be treated, for the purposes of Section 17 of the Project Agreement and for the purpose of Schedule 16 – Encumbrances, as Encumbrances of which DB Co had knowledge prior to Financial Close provided, however, that if such an agreement or amendment is not a Standard Agreement, the City shall provide a copy of any such agreement or amendment to DB Co prior to concluding the agreement or amending agreement. Within ten (10) Business Days of delivery by the City of a copy of any agreement or amendment to DB Co, DB Co may, subject to its obligations in Section 8.2(c), direct the City to abandon the acquisition of the relevant Additional Property Interest, failing which DB Co shall be deemed to have accepted the terms of the agreement or amending agreement.
- (f) DB Co may, from time to time request and the City shall provide an accounting of the costs incurred in respect of any acquisition of any Additional Property Interest by the City.

8.3 The provisions of Section 8.2 above shall apply with necessary amendments to the acquisition of Optional Lands by the City with the exception that Section 8.2(b) shall not apply and, while Section 8.2(a) shall apply, the City shall be required to use all reasonable efforts to secure the Optional Lands.

9. PROPERTY REQUEST PLANS

9.1 Conflict

In the event of any conflict between information contained on the face of a Property Request Plan and the Lands Table, the provisions contained in the Lands Table shall prevail.

9.2 Building Overlays

Building overlays included in Property Request Plans suggest the approximate extent of existing building envelopes only. Unless otherwise expressly provided in the Lands Table or in Schedule 15 – Output Specifications, notwithstanding the location of any building overlay, the grant of the non-exclusive licence, rights of use and access to any parcel forming part of the Lands extends only to within one hundred and fifty millimetres (150mm) from any existing building or structure. The City makes no representation as to the accuracy or completeness of building overlays included in Property Request Plans.

PART B – LANDS TABLE

[REDACTED]

PART C –FORM OF REPORT CARD

Report Card

Property Description:

PRP Reference:

Commencement Date:

Expected date of completion of Construction Activities and/or Works:

Description of Use which DB Co has put to the Report Card Parcel (include particulars):	
Description of Any Physical Alteration to Report Card Parcel:	
Summary of Baseline Conditions (including reference to relevant Background Information):	
Summary of Spill Reports (append reports):	
Volume of soil imported (append lab reports):	
Description of any soil or groundwater sampling (include results)	
Follow up Environmental Investigation Recommended (include detail):	

Every Report Card shall include the following attachments:

- (1) All applicable Property Request Plan(s) together with relevant site plans describing Report Card Parcel.
- (2) Lab reports with respect to imported soils (if any).
- (3) Spill reports (if any).
- (4) Copies of relevant Background Information or other environmental investigation reports.
- (5) Soil and Groundwater Sampling Reports (if any).

- (6) A summary of all reinstatement, restoration and/or rehabilitation works undertaken in accordance with Parts 1 and 6 of Schedule 15-2 or otherwise is required for all Report Card Parcels:
 - i. Designated Temporary Mobilization Lands (TM); and/or
 - ii. Where a significant grade change has occurred as a result of Construction Activities

SCHEDULE 21

CONSTRUCTION PERIOD PAYMENTS

1. INTERPRETATION AND DEFINITIONS

1.1 Interpretation

- (a) In this Schedule 21, and for the purposes of all calculations pursuant to this Schedule 21, all amounts cited in respect of capital costs and/or costs in respect of the construction of the Works are amounts net of any CA holdback.

1.2 Definitions

Any capitalized term not defined in this Schedule 21 shall have the meaning given to such term in the Project Agreement. In this Schedule 21, unless the context otherwise requires:

- (a) [not used]
- (b) “**Attachment A**”, “**Attachment B**”, “**Attachment C**”, “**Attachment D**”, “**Attachment E**”, “**Attachment F**” and “**Attachment G**” mean, respectively, Attachment A, Attachment B, Attachment C, Attachment D, Attachment E, Attachment F and Attachment G to this Schedule 21.
- (c) “**Capital Costs**” means costs incurred by DB Co in connection with the Project as reflected in the Financial Model that are not DB Co Soft Costs.
- (d) “**Construction Period Deduction**” means a deduction made from a Substantial Completion Payment in accordance with Section 6.1.
- (e) “**Construction Period Event**” means an incident or state of affairs that does not meet or comply with the Construction Period Performance Criteria, which is capable of becoming a Construction Period Quality Failure.
- (f) “**Construction Period Failure Category**” means the failure category described in the fourth column of the tables in Attachment E.
- (g) “**Construction Period Failure Type**” means the failure type described in the third column of the tables in Attachment E.
- (h) “**Construction Period Month**” means a calendar month during the Construction Period, except that:

- (i) the first Construction Period Month shall run from Financial Close until the end of the calendar month in which Financial Close occurs; and
 - (ii) the last Construction Period Month shall run from the first day of the calendar month in which the last Final Completion Date falls until the last Final Completion Date.
- (i) “**Construction Period Payment**” means a payment, which shall be no more frequent than once a month, calculated in accordance with this Schedule 21 and shall include the Financial Close CPP.
- (j) “**Construction Period Payment Application**” has the meaning set out in Section 3.3(a).
- (k) “**Construction Period Performance Criteria**” means the level of performance (as set out in the column entitled “Requirements to be met” in Attachment E) that DB Co must achieve to avoid a Construction Period Event for a failure to achieve compliance with the applicable Project Agreement requirement.
- (l) “**Construction Period Quality Failure**” means any failure by DB Co to comply with the requirements set out in the column entitled “Requirements to be met” corresponding to the Construction Period Performance Criteria designated as Construction Period Failure Type “CPQF” in Attachment E.
- (m) “**Construction Period Quality Failure Deduction**” has the meaning given in Section 6.2(a).
- (n) “**Contested Non-Conforming Works**” means Works in respect of which the City have given Notice to DB Co, pursuant to Section 51 of the Project Agreement (but not a Non-Conformance Report initiated by the City pursuant to Schedule 11 – Integrated Management System Requirements), that, in the opinion of the City, such Works are not in accordance with the Project Agreement, and DB Co has asserted that, in DB Co’s opinion, such Works are in accordance with the Project Agreement.
- (o) “**Credit Rules**” means the rules set out in Attachment F.
- (p) “**Critical Construction Period Quality Failure**” means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Critical” in Attachment E.
- (q) “**Critical Qualifying NCR**” means a Qualifying NCR raised by the City or DB Co on a Critical Non-Conformance that requires all or any portion of DB Co Accepted Works to be removed or repeated because such DB Co Accepted Works have, or would reasonably be expected to have, a significantly adverse or materially adverse impact on:
 - (i) the safety of the Project, the environment, System Users or the public;
 - (ii) statutory and regulatory requirements;
 - (iii) the quality of the Works; or
 - (iv) the durability of the Works.
- (r) “**Critical Qualifying Process NCR**” means a Qualifying Process NCR raised by the City or DB Co on a Non-Conformance that requires physical progress on the Works to be stopped for longer than twenty-four (24) hours.

- (s) **“DB Co Accepted Works”** means all physical elements of the Works that have been accepted by DB Co as meeting its acceptance criteria for those Works, pursuant to its Inspection and Test Plan.
- (t) **“DB Co Construction Period Payment Documentation”** has the meaning set out in Section 3.1(c).
- (u) **“DB Co Funding Amount”** means, for each Payment Period, [REDACTED]% of the Total Capital Cost Incurred to Date for the applicable Payment Period.
- (v) **“DB Co Officer Construction Period Payment Certificate”** has the meaning set out in Section 3.1(d).
- (w) **“DB Co Soft Costs”** means the special purpose vehicle costs, accounting, tax, audit costs, rating agency fees, bid fee cost, independent certifier costs, pre-construction costs (e.g. bid pursuit costs, financial advisor, legal advisor, insurance advisor), other ancillary fees, interest and fees paid in connection with the Financing, in each case, in accordance with and as reflected in the Financial Model and incurred by DB Co in connection with the Project (or with respect to the interest or fees paid in connection with the Financing for purposes of calculating the Total Capital Cost Incurred to Date actually incurred by DB Co and verified pursuant to the Lender Advance Confirmations).
- (x) **“Earned Value”** means the budgeted cost of work performed in respect of each Payment Period, measured using the Earned Value Measurement Techniques and the Performance Measurement Baseline.
- (y) **“Earned Value Measurement Techniques”** means the techniques used to measure Earned Value established by DB Co and agreed with the Independent Certifier in accordance with the “Practice Standard for Earned Value Management” (2nd Edition, published in 2011 by the Project Management Institute, Inc.).
- (z) **“Earned Value Progress Ratio”** means, as of a Payment Calculation Date, the aggregate total Earned Value achieved by DB Co and certified by the Independent Certifier divided by the Projected Earned Value (Cumulative).
- (aa) **“Financial Close CPP”** means the Construction Period Payment to be made by the City to DB Co on Financial Close.
- (bb) **“Financing”** means the financing with the Lenders to finance the costs of the Project pursuant to the Lending Agreements.
- (cc) **“IC Construction Period Payment Authorization Certificate”** has the meaning set out in Section 3.3(c).
- (dd) **“Lender Advance Confirmations”** has the meaning set out in Section 3.1(a).
- (ee) **“Lender Advances”** has the meaning set out in Section 3.1(a)(i).
- (ff) **“Medium Construction Period Quality Failure”** means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Medium” in Attachment E.

- (gg) **“Medium Qualifying NCR”** means a Qualifying NCR raised by the City or DB Co on a Medium Non-Conformance for all or any portion of DB Co Accepted Works that is not a Critical Qualifying NCR.
- (hh) **“Medium Qualifying Process NCR”** means a Qualifying Process NCR raised by the City or DB Co on a Non-Conformance that requires changes to a Works Submittal being used by DB Co in its delivery of the Works that is not a Critical Qualifying NCR.
- (ii) **“Minor Construction Period Quality Failure”** means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Minor” in Attachment E.
- (jj) **“Minor Construction Period Quality Failure Tolerance”** has the meaning given in Section 6.3(a).
- (kk) **“Minor Qualifying NCR”** means a Qualifying NCR raised by the City on a Minor Non-Conformance on all or any portion of the Works that have been inspected and tested or approved by DB Co at a Witness Point or Hold Point, pursuant to the relevant Inspection and Test Plan but are not yet DB Co Accepted Works. For clarity, a Minor Qualifying NCR does not mean a Qualifying NCR raised by DB Co.
- (ll) **“Minor Qualifying Process NCR”** means a Qualifying Process NCR raised by the City on a Minor Non-Conformance that is not a Critical Qualifying Process NCR or Medium Qualifying Process NCR. For clarity, a Minor Qualifying Process NCR does not mean a Qualifying Process NCR raised by DB Co.
- (mm) **“Mobilization Credit”** has the meaning given in Section 1.3(e) of Attachment F.
- (nn) **“Monthly Non-Conformance Report”** means the monthly report to be submitted by DB Co in accordance with Section 2.11 of Schedule 11 – Integrated Management System Requirements.
- (oo) **“NCR”** means a Non-Conformance Report.
- (pp) **“Non-Conformance”** has the meaning given in Schedule 11- Integrated Management System Requirements.
- (qq) **“Non-Conformance Report”** has the meaning given in Schedule 11 – Integrated Management System Requirements.
- (rr) **“Payment Application Requirements”** has the meaning set out in Section 3.3(a).
- (ss) **“Payment Calculation Date”** means the date set out in Column 2 of Table A that is the date to be used as the “Payment Calculation Date” for the applicable Construction Period Payment, subject to Section 2.2(a)(ii).
- (tt) **“Payment Period”** means the payment period(s) identified in Column 1 of Table A.
- (uu) **“Performance Measurement Baseline”** is the Capital Cost loaded Works Schedule, at detailed activity level, that has achieved “NO COMMENT” or “MINOR COMMENT” status in accordance with Section 13 of the Project Agreement, as amended from time to time by the parties in accordance with Section 13 of the Project Agreement.

- (vv) **“Projected Capital Costs”** means, in respect of each Payment Period, the amount set out in Column 3A of Table A.
- (ww) **“Private Capital Invested”** means the total amount of Financing advanced and utilized in the Project to fund the Works, comprising the aggregate of all DB Co Funding Amounts.
- (xx) **“Projected Construction Period Payment”** means, in respect of each Construction Period Payment, the amount set out in Column 9 of Table A, which shall equal [REDACTED]% of the Projected Eligible Construction Period Payment for the applicable Payment Period.
- (yy) **“Projected Construction Period Payment (Cumulative)”** means, in respect of each Construction Period Payment, the amount set out in Column 10 of Table A.
- (zz) **“Projected DB Co Funding Amount”** means, in respect of each Payment Period, the amount set out in Column 6 of Table A, which shall equal [REDACTED]% of the Projected Eligible Construction Period Payment for the applicable Payment Period.
- (aaa) **“Projected DB Co Funding Amount (Cumulative)”** means, in respect of each Payment Period, the amount set out in Column 7 of Table A.
- (bbb) **“Projected DB Co Soft Costs”** means, in respect of each Payment Period, the amount set out in Column 3 of Table A.
- (ccc) **“Projected Earned Value”** means, in respect of each Construction Period Payment, the amount set out in Column 3B of Table A.
- (ddd) **“Projected Eligible Construction Period Payment”** means, in respect of each Construction Period Payment, the amount set out in Column 4 of Table A, which shall be the sum of the Projected DB Co Soft Costs and Projected Capital Costs.
- (eee) **“Projected Eligible Construction Period Payment (Cumulative)”** means, in respect of each Construction Period Payment, the amount set out in Column 5 of Table A.
- (fff) [not used]
- (ggg) **“Qualifying NCR”** means a Non-Conformance Report in accordance with Schedule 11 – Integrated Management System Requirements regarding any Non-Conformance discovered in the physical elements of any of the Works:
- (i) for which DB Co has continued, or has stated the intention to continue, construction of the Works past the relevant Witness Point or Hold Point in contravention of the Inspection and Test Plan; or
 - (ii) following DB Co’s stated completion of a task or component and DB Co’s statement that the requirements for Design and Construction Certification have been met in respect of such Works and such Works have been inspected and tested by DB Co pursuant to the Inspection and Test Plan,
- and shall include “Critical Qualifying NCR”, “Medium Qualifying NCR” or “Minor Qualifying NCR”.

- (hhh) **“Qualifying Process NCR”** means a Non-Conformance Report in accordance with Schedule 11 – Integrated Management System Requirements regarding any Non-Conformance discovered in the Project Operations as described in Attachment E, and shall include “Critical Qualifying Process NCR”, “Medium Qualifying Process NCR” or “Minor Qualifying Process NCR”.
- (iii) **“Remedial Period”** means the period allowed for remedying a Construction Period Quality Failure in accordance with the fifth column of the tables in Attachment E.
- (jjj) **“Repeated Minor Construction Period Quality Failure”** has the meaning set out in Section 6.3(c).
- (kkk) **“Request for Payment”** has the meaning set out in Section 3.3(a)(i).
- (lll) **“Supplementary Payment Calculation Date”** has the meaning set out in Section 2.3(a).
- (mmm) **“Table A”** means the Table A set out in Attachment A.
- (nnn) **“Total Capital Cost”** means \$[REDACTED]
- (ooo) **“Total Capital Cost Incurred to Date”** means the cumulative amount of the Total Capital Cost determined as of each Payment Calculation Date as the sum of:
- (i) the cumulative aggregate of Capital Costs up to, and including, the Payment Period as set out in Table A, multiplied by the Earned Value Progress Ratio; and
 - (ii) the cumulative aggregate of DB Co Soft Costs up to, and including, the Payment Period as set out in Table A.
- (ppp) **“Unpaid Construction Period Payment”** means any portion of the Projected Eligible Construction Period Payment (Cumulative) set out in Table A that is unpaid after the last Construction Period Payment set out in Table A.

2. PAYMENTS BY THE CITY

2.1 Obligation to Pay

- (a) The City shall pay to DB Co:
- (i) the Construction Period Payments; and
 - (ii) the Substantial Completion Payments,
- in accordance with the Project Agreement and this Schedule 21.

2.2 Calculation of the Construction Period Payments

- (a) Each Construction Period Payment shall be calculated in accordance with the following:
- (i) subject to Section 2.2(a)(ii) and Section 2.3, the number of Construction Period Payments to be paid by the City is set out in Table A;
 - (ii) the first actual Payment Calculation Date shall be the first Payment Calculation Date set out in Table A and each Payment Calculation Date thereafter shall occur on the applicable Payment Calculation Date set out in Table A;
 - (iii) each Construction Period Payment shall equal the lesser of:
 - (A) the Projected Construction Period Payment (Cumulative) set out in Table A for the applicable Payment Period less the total value of all Construction Period Payments made by the City prior to the date of calculation; or
 - (B) the Total Capital Cost Incurred to Date minus the DB Co Funding Amounts prior to and including the applicable Payment Period less the total value of all Construction Period Payments made by the City prior to the date of calculation;
- provided that, the amount of the Financial Close CPP shall be as determined in accordance with Section 3.4.

2.3 Payment of Unpaid Construction Period Payment Prior to Substantial Completion

- (a) After the expiration of all Payment Calculation Dates set out in Column 2 of Table A, DB Co may identify additional Payment Calculation Dates (each a “**Supplementary Payment Calculation Dates**”) for the purposes of seeking payment of any Unpaid Construction Period Payment, or any portion thereof, in accordance with the following:
- (i) DB Co shall provide at least 30 days’ Notice to the City of each Supplementary Payment Calculation Date;
 - (ii) All provisions of this Schedule 21 with respect to the application for, and calculation and Independent Certifier review of, a Construction Period Payment shall apply mutatis mutandis to an application for, and calculation and Independent Certifier review of, a payment pursuant to this Section 2.3;
 - (iii) Each Supplementary Payment Calculation Date shall occur no more than once a month;

and

- (iv) any Unpaid Construction Period Payment, or any portion thereof, not paid pursuant to this Section 2.3 shall be paid in accordance with Section 4.2.

2.4 [Not Used]

2.5 Calculation of Substantial Completion Payment

- (a) Subject to Section 2.3, the payment to be made by the City following Substantial Completion shall be calculated in accordance with the following:
 - (i) The payment made following Substantial Completion shall equal,
 - (A) the Substantial Completion Payment; **plus**
 - (B) in respect of West Substantial Completion any Unpaid Construction Period Payment as of the date of payment of the West Substantial Completion Payment.
 - (ii) For clarity, DB Co acknowledges and agrees that,
 - (A) the Substantial Completion Payments are intended to act as a “take-out” payment for Private Capital Invested in the Project;
 - (B) DB Co has structured its Construction Period Payments and the Substantial Completion Payments to ensure that the Total Capital Cost of the Project is paid in a timely manner, and satisfied in full from the final Substantial Completion Payment; and
 - (C) the City has the authority to pay up to **[REDACTED]**% of Total Capital Costs through payment of the Construction Period Payments, plus the Substantial Completion Payments.

3. CONSTRUCTION PERIOD PAYMENTS

3.1 Information to be Provided by DB Co – Lender Advance Confirmations and DB Co Construction Period Payment Documentation

- (a) In order to enable the City and the Independent Certifier to calculate and verify Earned Value, the progress of the Works, the Capital Costs, DB Co Soft Costs and the Construction Period Payments, DB Co shall deliver to the City Representative and the Independent Certifier:

- (i) evidence of all Private Capital Invested, including copies of all draw requests, reports, information, and documentation supporting, or required to be submitted to the Lenders, the Lenders' technical advisor and/or the Lenders' Agent, as the case may be, in respect of DB Co's applications for advances, draws, releases of funds or payments by the Lenders under the Lending Agreements ("**Lender Advances**"); and
 - (ii) all payment or advance confirmations issued by or on behalf of the Lenders including, for clarity, issued by the Lenders' technical advisor,
- (items in Section 3.1(a)(i) and Section 3.1(a)(ii) collectively referred to as "**Lender Advance Confirmations**"). Acceptable forms of confirmation would include such proof as wire transfer statements and/or bank statements and any other evidence as agreed between the City and DB Co.
- (b) DB Co shall acquire, from the Lenders or the Lenders' Agent, as part of the Financing and in a form and content acceptable to the City Representative, the right for DB Co to receive, and to deliver to the City and the Independent Certifier, copies of all Lender Advance Confirmations. DB Co shall deliver to the City Representative and the Independent Certifier, copies of all Lender Advance Confirmations within two Business Days following receipt of each Lender Advance by DB Co.
 - (c) In order to enable the City and the Independent Certifier to calculate and verify progress of the Earned Value of the Works, the Capital Costs, the DB Co Soft Costs and the Construction Period Payments, DB Co shall submit, to the Independent Certifier,
 - (i) all information required by Schedule 33 – Works Reports and Schedule 12 – Works Scheduling Requirements; and,
 - (ii) any other information reasonably required by the Independent Certifier to allow the Independent Certifier to assess the Earned Value, the Capital Costs, the DB Co Soft Costs and the payment to be made under Section 2.2(a)(iii)(B) and to assess the Total Capital Cost Incurred to Date,(collectively, the "**DB Co Construction Period Payment Documentation**").
 - (d) In conjunction with all Construction Period Payment Applications, DB Co shall complete and deliver to the City Representative and the Independent Certifier a DB Co officer certificate in substantially the form set out in Attachment C confirming the information set out therein ("**DB Co Officer Construction Period Payment Certificate**").

3.2 Intentionally Deleted

3.3 Submission and Review of DB Co Construction Period Payment Applications

- (a) No later than five days after each Payment Calculation Date, DB Co shall prepare, complete and deliver an application for payment of the applicable Construction Period Payment (a "**Construction Period Payment Application**") to the City Representative and the Independent Certifier. Each Construction Period Payment Application shall consist of,

- (i) a request for payment substantially in the form attached as Attachment B, including all documents contemplated in the request for payment pursuant to Attachment B (each, a “**Request for Payment**”);
 - (ii) except to the extent already delivered to the City, the Lender Advance Confirmations;
 - (iii) except to the extent already delivered to the City, the DB Co Construction Period Payment Documentation; and
 - (iv) a DB Co Officer Construction Period Payment Certificate certifying the amount of Total Capital Cost Incurred to Date, as of the applicable Payment Calculation Date.
- (collectively, (i) – (iv), the “**Payment Application Requirements**”).
- (b) DB Co shall cooperate with the City Representative and the Independent Certifier to permit the Independent Certifier’s review and assessment of the DB Co Construction Period Payment Documentation, the Lender Advance Confirmations and all other documentation submitted with the Construction Period Payment Application. Such cooperation shall include responding to inquiries by the Independent Certifier so that the Independent Certifier can verify any and all matters related to the DB Co Construction Period Payment Documentation and the Lender Advance Confirmations, and the statements contained therein, to the reasonable satisfaction of the Independent Certifier.
 - (c) Within five Business Days after the receipt by the Independent Certifier of a duly completed Construction Period Payment Application, the Independent Certifier shall review the Total Capital Cost Incurred to Date claimed in the Construction Period Payment Application and shall perform such inquiries, investigations and inspections as are necessary for the Independent Certifier to be able to verify Earned Value and Total Capital Cost Incurred To Date and shall provide a certificate (an “**IC Construction Period Payment Authorization Certificate**”) to the City Representative and the DB Co Representative setting out:
 - (i) a certification to the City of the Total Capital Cost Incurred to Date, in accordance with the Works Report; and
 - (ii) a calculation of the Construction Period Payment pursuant to Section 2.2, and a calculation of the corresponding DB Co Funding Amount for such Payment Period,
 - (d) The City shall, subject to and in accordance Article 4 of the Project Agreement and no later than five Business Days after the date of the IC Construction Period Payment Authorization Certificate, pay the applicable Construction Period Payment to DB Co.
 - (e) DB Co covenants and agrees that DB Co shall,

- (i) carry out the Works and make all payments due and payable to the Construction Contractor in respect of the Works and to the applicable recipients of the DB Co Soft Costs without further payments from the City other than Construction Period Payments, and the Substantial Completion Payments as set out in this Schedule 21; and
- (ii) continue to comply with the provisions of the Project Agreement and the CA including complying with all holdback and trust obligations from its own resources, if necessary, and as required under the CA.

3.4 Financial Close CPP

The preceding Sections 3.1 and 3.3 are subject to this Section 3.4.

The amount of the Financial Close CPP shall be [REDACTED]% of the mobilization costs.

Notwithstanding Sections 3.1 and 3.3, all deliveries of documents and other information, and related determinations, shall be made by the parties during the period prior to Financial Close so that the Financial Close CPP may be made by the City on Financial Close as part of the agreed flow of funds on that date. All required deliveries and other information shall be advised by the parties to each other in a timely manner.

4. SUBSTANTIAL COMPLETION PAYMENTS

4.1 Substantial Completion Payments

- (a) [Not used]
- (b) Once DB Co believes that it has satisfied:
 - (i) all requirements for East Substantial Completion, it shall deliver the East Substantial Completion Notice contemplated in Section 25.4 of the Project Agreement; and
 - (ii) all requirements for West Substantial Completion, it shall deliver the West Substantial Completion Notice contemplated in Section 25.4 of the Project Agreement.
- (c) The City shall, once all preconditions to eligibility for payment have been satisfied in accordance with the provisions of the Project Agreement, and subject to Article 4 of the Project Agreement, pay to DB Co:
 - (i) upon issuance of the East Substantial Completion Certificate, the East Substantial Completion Payment, plus, for clarity, applicable HST, on the East Substantial Completion Payment Date; and
 - (ii) upon issuance of the West Substantial Completion Certificate, the West Substantial Completion Payment plus, for clarity, applicable HST, less any Lane Closure Adjustment and Bus Rapid Transit Lane Closure Adjustment, on the West Substantial Completion Payment Date.

4.2 Payment of Remaining Unpaid Construction Period Payments

- (a) Subject to Section 2.3, once DB Co believes that it has satisfied all requirements for West Substantial Completion, it shall deliver an application for payment of any remaining Unpaid

Construction Period Payments for the Works to the City Representative and the Independent Certifier substantially in the form attached as Attachment D (the “**Unpaid Construction Period Payment Application**”) which shall provide all documentation in respect of such Unpaid Construction Period Payments. Once all of the conditions for payment of the West Substantial Completion Payment have been satisfied by DB Co, the City shall pay or cause to be paid to DB Co all such Unpaid Construction Period Payments.

5. GENERAL

- (a) DB Co shall provide direction to the City as to a bank account with a Schedule 1 Bank in Canada or an alternative bank in Canada provided such bank is permitted under the Lending Agreements, where each Construction Period Payment, the Substantial Completion Payments and any Unpaid Construction Period Payments, together with applicable HST, are to be deposited.
- (b) DB Co acknowledges and agrees that payment by the City of Construction Period Payments, the Substantial Completion Payments and the Unpaid Construction Period Payments in accordance with this Schedule 21 constitutes payment by the City to DB Co in satisfaction of the City’s obligation to pay Construction Period Payments and the Substantial Completion Payments, as applicable, to DB Co under the Project Agreement and in satisfaction of any trust obligation of the City with respect to such payments under Section 7 of the CA pursuant to Section 10 of the CA.
- (c) DB Co shall provide to the City, from time to time and no later than 5 Business Days after a request from the City, such information and documentation as the City may require (including certification in writing by a DB Co officer addressed to the City and the Independent Certifier, to demonstrate that the proceeds of the Construction Period Payments, and the Substantial Completion Payments are being used to pay duly authorized costs of the Works, special purpose vehicle costs, Financing costs, and other costs incurred to complete the Works) to verify that all amounts due and payable in respect of the costs of the Works, special purpose vehicle costs, Financing costs and other costs incurred to complete the Works for the applicable period in excess of the applicable Construction Period Payment or Substantial Completion Payment are being satisfied and to satisfy all holdback and trust obligations owed to the Construction Contractor and other Subcontractors from time to time under the CA.
- (d) Notwithstanding anything to the contrary in this Schedule 21 or the Project Agreement,
 - (i) the City is not obligated to make any payment to DB Co (including for clarity, any Construction Period Payments or Substantial Completion Payments) unless all conditions precedent applicable to such payment pursuant to this Schedule 21 have been satisfied by DB Co; and
 - (ii) the City is not obligated to make payment to DB Co if, in connection with the Works, the City is or becomes aware,
 - (A) that a claim for lien under the CA has been registered against the Lands; or
 - (B) that a notice of lien or claim for lien under the CA has been made against or in respect of the Lands or the holdbacks required to be maintained under the CA; or

- (C) that there has been a failure by DB Co or any DB Co Party to comply with the requirements of the CA, including a failure to satisfy the statutory holdbacks under the CA in respect of the Works,

(in each case to the extent that any such liens, claims or failures have been caused by an act or omission of DB Co or any DB Co Party), and provided that no payment from the City shall be withheld or delayed on the grounds of any liens registered or claimed, where such liens have been duly released, discharged or vacated in accordance with the requirements of the CA.

- (e) No Construction Period Payment, or Substantial Completion Payment or partial or entire use or occupancy of the New City Infrastructure, the New MTO Infrastructure or the Lands shall constitute acceptance by the City of the Works in accordance with the Project Agreement.
- (f) If the City or DB Co, acting in good faith, dispute a determination of the Independent Certifier made pursuant to this Schedule 21, the City shall pay the amounts in dispute in accordance with the determination of the Independent Certifier and the Party that wishes to dispute the decision of the Independent Certifier may refer such Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) Sections 4.2, 4.6 and 4.7 of the Project Agreement apply to Construction Period Payments, and the Substantial Completion Payments.
- (h) Notwithstanding anything to the contrary in the Project Agreement, the City shall not make any deduction, set-off or withholding from any Construction Period Payment or Unpaid Construction Period Payment other than in accordance with this Schedule 21.

6. CONSTRUCTION ENFORCEMENT DEDUCTIONS

6.1 Construction Period Deductions

- (a) If, at any time prior to Substantial Completion, DB Co commits a Construction Period Quality Failure, the City may, in its sole discretion, assess and accumulate a Construction Period Deduction and deduct the total of all Construction Period Deductions from the West Substantial Completion Payment.

6.2 Calculation of the Construction Period Deductions

- (a) Each Construction Period Deduction shall be calculated in accordance with the following formula:

$$TCPD_n = \sum CPD_n$$

Where:

$TCPD_n$ means the total Construction Period Deduction applicable to Payment Period n; and

$\sum CPD_n$ means the sum of Construction Period Deductions in respect of the relevant Payment Period in relation to Construction Period Quality Failures calculated in accordance with this Schedule 21 (the “**Construction Period Quality Failure Deduction**”)

- (b) The deduction attributable to each Construction Period Quality Failure shall be as follows:
- (i) in the case of a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by DB Co, there shall be no deduction;
 - (ii) in the case of a Medium Construction Period Quality Failure for a Non-Conformance Report initiated by DB Co, each deduction shall equal **[\$REDACTED]**;
 - (iii) in the case of a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City:
 - (A) the first deduction shall equal **[\$REDACTED]**; and
 - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period, shall be **[\$REDACTED]** per cent of the immediately previous deduction but shall not exceed **[\$REDACTED]** per cent of the first deduction;
 - (iv) in the case of a Medium Construction Period Quality Failure for a Non-Conformance Report initiated by the City:
 - (A) the first deduction shall equal **[\$REDACTED]**; and
 - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal **[\$REDACTED]** per cent of the immediately previous deduction but shall not exceed **[\$REDACTED]** per cent of the first deduction; and
 - (v) in the case of a Critical Construction Period Quality Failure for a Non-Conformance Report initiated by either Party:
 - (A) the first deduction shall equal **[\$REDACTED]**; and
 - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal **[\$REDACTED]** per cent of the immediately previous deduction but shall not exceed **[\$REDACTED]** per cent of the first deduction.
- (c) For clarity, subject to DB Co's right to Dispute the Construction Period Quality Failure, the occurrence of a Construction Period Quality Failure will immediately give rise to a right, on behalf of the City, to apply a Construction Period Quality Failure Deduction against the Substantial Completion Payment, irrespective of the Remedial Period permitted.
- (d) After the occurrence of a Construction Period Quality Failure, DB Co shall remediate the Construction Period Quality Failure prior to the expiration of the applicable Remedial Period set out in Attachment E.
- (A) If, prior to the expiration of the applicable Remedial Period, DB Co demonstrates, to the satisfaction of the City Representative, acting reasonably, that it has remedied the Construction Period Quality Failure, no further

Construction Period Deduction shall be made in respect of that Construction Period Quality Failure.

- (B) If DB Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period, the City, may, in its sole discretion, apply a further Construction Period Deduction, calculated in accordance with this Section 6.2, and a further Remedial Period (or Remedial Periods) of the same duration shall be deemed to have commenced.
- (C) The City may, in their sole discretion, apply the applicable Construction Period Deduction each time DB Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period until such time as DB Co demonstrates, to the satisfaction of the City Representative, acting reasonably, that it has remediated the applicable Construction Period Quality Failure.

6.3 Tolerances for Minor Construction Period Quality Failures for Non-Conformance Reports Initiated by the City

- (a) The City shall assess Construction Period Quality Failures on a Construction Period Month by Construction Period Month basis. Except as provided in Section 6.3(c), the City shall not apply a Construction Period Deduction due to a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City in respect of any Construction Period Month in which the total number of Minor Construction Period Quality Failures for Non-Conformance Reports initiated by the City for that Construction Period Month is less than or equal to **[REDACTED]** (the “**Minor Construction Period Quality Failure Tolerance**”).
- (b) If the Minor Construction Period Quality Failure Tolerance is exceeded, the City may, in their sole discretion, apply a Construction Period Deduction for each Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City in excess of the Minor Construction Period Quality Failure Tolerance during the applicable Construction Period Month.
- (c) If, in any Construction Period Month, a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City is due to circumstances that are substantively the same cause as a previous Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City (within the same Construction Period Month or in a different Construction Period Month) (a “**Repeated Minor Construction Period Quality Failure**”), then a Construction Period Deduction shall be made in respect of the third and each subsequent Repeated Minor Construction Period Quality Failure, irrespective of the Minor Construction Period Quality Failure Tolerance.

6.4 Administration of Construction Period Quality Failures and Construction Period Deductions

- (a) Subject to Sections 6.4(b) to 6.4(e) inclusive, the City shall use the Monthly Non-Conformance Report produced by DB Co for the purposes of calculating the relevant Construction Period Deductions.
- (b) If either Party believes that there is an error or omission in a Monthly Non-Conformance Report, that Party shall promptly provide Notice to the other Party of such error or omission. Immediately after a Notice given pursuant to this Section 6.4(b), DB Co and the City shall

attempt to resolve or clarify the error or omission and amend the applicable Monthly Non-Conformance Report, to their mutual satisfaction, acting reasonably. Subject to Section 6.4(e), if the Parties fail to resolve or clarify the error or omission within ten Business Days after a Notice given pursuant to this Section 6.4(b), either Party may refer the matter to the Dispute Resolution Procedure. Subject to Section 6.4(d) and Section 6.4(e), the Parties are prohibited from giving Notice of an error or omission pursuant to this Section 6.4(b) after the expiration of 60 days after the date of the applicable Monthly Non-Conformance Report.

- (c) Subject to Section 6.4(e), if DB Co fails to monitor or accurately report a Construction Period Event or Construction Period Quality Failure then, in addition to the Construction Period Deduction to be made in respect of the relevant Construction Period Quality Failure (if any), a failure to monitor or report a Construction Period Event or a Construction Period Quality Failure shall be deemed to be a Minor Construction Period Quality Failure.
- (d) In the event that any inspection or investigation by the City or DB Co pursuant to the Project Agreement reveals new errors, omissions or failures of the type referred to in Section 6.4(b) or Section 6.4(c), such errors, omissions or failures shall be dealt with in accordance with Section 6.4(b) or Section 6.4(c), as applicable, and, for clarity, the City may, in its sole discretion, apply Construction Period Deductions in respect of any Construction Period Quality Failures discovered pursuant to this Section 6.4(d) in the manner set out in Section 6.2. Any such Construction Period Deductions shall be made from the Substantial Completion Payment. For clarity, the 60 day deadline set out in Section 6.4(b) shall not apply to errors, omissions or failures revealed pursuant to this Section 6.4(d).
- (e) For the purposes of Sections 6.4(b), 6.4(c) and 6.4(d), if DB Co or a DB Co Party has engaged in fraudulent action or inaction, deliberate misrepresentation, or gross misconduct or incompetence,
 - (i) in the preparation of the Monthly Non-Conformance Report; or
 - (ii) in carrying out the Work resulting in Construction Period Quality Failures,then,
 - (iii) the 60 day deadline set out in Section 6.4(b) shall not apply; and
 - (iv) a failure to monitor or accurately report a Construction Period Event or Construction Period Quality Failure pursuant to Section 6.4(c) shall be deemed to be a Critical Construction Period Quality Failure.
- (f) For clarity, if Construction Period Performance Criteria are based upon Non-Conformance Reports, no Construction Period Deductions shall be made for a Non-Conformance Report which is subject to an objection by DB Co, a Notice of objection by DB Co or Dispute Resolution Process, pursuant to Part 7 of Schedule 11 – Integrated Management System Requirements.

6.5 Additional Requirements for Tracking and Reporting

- (a) In addition to the requirements of Section 7.2 of Part 7 to Schedule 11 – Integrated Management System Requirements, the Non Conformance Tracking System shall record Construction Period Quality Failure Deductions pursuant to this Schedule 21.

- (b) In addition to the requirements of Section 7.2 of Part 7 to Schedule 11 – Integrated Management System Requirements, the Monthly Non-Conformance Report shall contain:
 - (i) the number of Construction Period Quality Failure Deductions in each Construction Period Failure Category accrued within the last Construction Period Month pursuant to this Schedule 21; and
 - (ii) summary statistics and historic trends since Financial Close for the number of Construction Period Quality Failure Deductions in each Construction Period Failure Category each Construction Period Month pursuant to this Schedule 21.

6.6 Disputing a Non-Conformance Report During the Construction Period

- (a) In respect of the following circumstances, the Parties shall be subject to the binding determination of the Independent Certifier pursuant to Section 4.3 and 4.4 of Schedule 27 – Dispute Resolution Procedure and the Independent Certifier’s decision shall be final and shall not be subject to Dispute Resolution:
 - (i) a Notice of objection to a Non-Conformance Report has not been resolved by mutual agreement between the City and DB Co within five Business Days after the delivery of a Notice of the objection pursuant to Section 7.1(a)(v) and Section 7.1(a)(vii) of Part 7 to Schedule 11 – Integrated Management System Requirements; and
 - (ii) the Non-Conformance Report referred to in Section 6.6(a)(i) would have been a Construction Period Quality Failure with a Construction Period Failure Category of “Minor” if the Notice of objection referred to in Section 6.6(a)(i) had not been issued.

ATTACHMENT A

Table A: Payment Calculation Dates and Projected Construction Period Payments

Payment Period (Column 1)	Payment Calculation Date (Column 2)	Projected DB Co Soft Costs (Column 3)	Projected Capital Costs (Column 3A)	Projected Earned Value (Cumulative) (Column 3B)	Projected Eligible Construction Period Payment (Column 4)	Projected Eligible Construction Period Payment (Cumulative) (Column 5)	Projected DB Co Funding Amount (Column 6)	Projected DB Co Funding Amount (Cumulative) (Column 7)	[not used] (Column 8)	Projected Construction Period Payment (Column 9)	Projected Construction Period Payment (Cumulative) (Column 10)
	[Financial Close]										
1.	25-Apr-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
2.	1-May-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
3.	1-Jun-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
4.	1-Jul-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
5.	1-Aug-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
6.	1-Sep-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
7.	1-Oct-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
8.	1-Nov-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
9.	1-Dec-19	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
10.	1-Jan-20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
11.	1-Feb-20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]
12.	1-Mar-20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]

Project Agreement – Schedule 21 Execution Version

~~CONFIDENTIAL AND PROPRIETARY~~

[illegible]

[illegible]

ATTACHMENT B

Form of Request for Payment

TO: the City AND TO: [Independent Certifier]	BY: [DB Co Name] (“DB Co”)
Construction Period Payment No:	Project: Ottawa LRT Project-Stage 2 Confederation Line Extension (“Project”)
Date: [Date]	Project Agreement dated _____ (“Project Agreement”)

1. DB Co hereby makes application for payment in the amount of _____ [insert amount in words] Dollars (\$[insert amount in numbers]) which is in respect of Payment Period No. __ in Table A. This payment is for a portion of the Total Capital Costs pursuant to the terms of the Project Agreement and Schedule 21 – Construction Period Payments. Capitalized terms used and not defined herein shall have the same meaning given to them in the Project Agreement.
2. Attached to this Request for Payment is a DB Co Officer Construction Period Payment Certificate in respect of this Payment Period No. ____ [Note: Use the form of certificate set out in Attachment C of this Schedule 21.];
3. DB Co hereby certifies that the Earned Value and the Total Capital Cost Incurred To Date for the applicable Payment Period qualifies DB Co for the Construction Period Payment being requested herein.
4. Attached hereto as Appendix 1 are the Lender Advance Confirmations for the period covered by this Request for Payment.
5. Attached hereto as Appendix 2 is a current Workplace Safety and Insurance Board Clearance Certificate for Construction Contractor evidencing full compliance by [DB Co/Construction Contractor] with the requirements of the *Workplace Safety and Insurance Act, 1997* (Ontario).
6. Attached hereto as Appendix 3 is a Statutory Declaration by DB Co on CCDC Form 9A (2001) evidencing compliance by DB Co with the holdback requirements of the CA.

The information and calculations contained herein and on the attachments hereto are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20 [●].

[DB Co]

per: _____

Appendix 1

Summary of any Lender Advance Confirmations for the Period

Appendix 2

Current Workplace Safety and Insurance Board Clearance Certificate

Appendix 3

Statutory Declaration by DB Co on CCDC Form 9A (2001)

ATTACHMENT C

Form of DB Co Officer Construction Period Payment Certificate

TO: the City AND TO: [Independent Certifier]	BY: [DB Co Name] (“DB Co”)
Progress Certificate/Construction Period Payment No: ____	Project: Ottawa LRT Project-Stage 2 Confederation Line Extension (“Project”)
Date: [Date]	Project Agreement dated ____ (“Project Agreement”)
	Request for Payment dated ____ (“Request for Payment”)

I, _____, the [insert title] of [DB Co] hereby certify for and on behalf of DB Co without incurring personal liability and confirm that the same be relied upon by the City and the Independent Certifier without further enquiry as of _____[insert date] that:

1. I am a duly authorized [signing officer of][signatory for] DB Co, am familiar with the provisions of Project Agreement and have made reasonable investigations of corporate records and inquiries of other officers and senior personnel of DB Co in certifying the information set out below. Terms defined in the Project Agreement have the same meanings when used in this certificate.
2. No DB Co Event of Default has occurred and is continuing under the Project Agreement and the other Project Documents.
3. DB Co has available to it sufficient funds to achieve Substantial Completion in accordance with the Project Agreement subject to DB Co continuing to meet its obligations under the Project Agreement and in receipt of Construction Period Payments from the City.
4. All DB Co Funding Amounts that were to have been funded prior to the date of this Certificate have been funded.
5. All funds received and disbursed by DB Co in connection with the Project prior to the date of this Certificate have been used solely in respect of the payment of Total Capital Costs properly due and payable.
6. The requested Construction Period Payment amount to which this Certificate is attached does not exceed the Projected Eligible Construction Period Payment (Cumulative) set out in Table A applicable to the period to which this Certificate applies.
7. DB Co has complied with all requirements of Applicable Law in connection with the Project, including without limitation, all requirements under the *Workplace Safety and Insurance Act, 1997* (Ontario) and the CA. No claims for lien or notices of lien under the CA have been

received by DB Co or any DB Co Party which have not been duly released, discharged or vacated in accordance with the requirements of the CA, if applicable. Any notice of lien or claim for lien identified in paragraph 10 of the Request for Payment to which this Certificate is attached has been released, discharged or vacated in accordance with the requirements of the CA.

Dated this _____ day of _____, 20____.

Name: _____

Title: _____

Appendix 1 to Attachment C

Copies of any Lender Advance Confirmations

ATTACHMENT D

Form of Substantial Completion Payment Application

TO: the City AND TO: [Independent Certifier]	BY: [DB Co Name] (“DB Co”)
[East / West] Substantial Completion Payment Application	Project: Ottawa LRT Project-Stage 2 Confederation Line Extension (“Project”)
Date: [Date]	Project Agreement dated _____ (“Project Agreement”)

1. DB Co hereby makes application for the [East / West] Substantial Completion Payment [and Unpaid Construction Period Payments in the amount of [insert amount in words] Dollars (\$[insert amount in numbers])] [NTD: Unpaid Construction Period Payments to be paid at West Substantial Completion only] pursuant to the terms of the Project Agreement and Schedule 21 – Construction Period Payments. Capitalized terms used and not defined herein shall have the same meaning given to them in the Project Agreement.
2. DB Co has certified to the City that all requirements for [East / West] Substantial Completion and all conditions for issuance of the [East / West] Substantial Completion Certificate have been satisfied, and has performed all requirements and provided all assurances and documents set out in the definition of “[East / West] Substantial Completion” in the Project Agreement.
3. No DB Co Event of Default has occurred and is continuing under the Project Agreement.
4. DB Co has complied with all requirements of Applicable Law in connection with the Project, including without limitation, all requirements under the *Workplace Safety and Insurance Act, 1997* (Ontario) and the CA. No claims for lien or notices of lien under the CA have been received by DB Co or any DB Co Party which have not been duly released, discharged or vacated in accordance with the requirements of the CA.
5. Attached hereto as Appendix 1 is a current Workplace Safety and Insurance Board Clearance Certificate for DB Co evidencing full compliance by [DB Co/Construction Contractor] with the requirements of the *Workplace Safety and Insurance Act, 1997* (Ontario), as amended.
6. Attached hereto as Appendix 2 is a Statutory Declaration by DB Co on CCDC Form 9A (2001) evidencing compliance by DB Co with the holdback requirements of the CA.
7. Attached hereto as Appendix 3 is a sub-search of the title to the Lands against which a claim for lien under the CA could be registered, if applicable. Any notice of lien or claim for lien identified in such Appendix 4 has been released, discharged or vacated in accordance with the requirements of the CA.

The information and calculations contained herein and on the attachments hereto are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20 [●].

[DB Co]

per: _____

Appendix 1 to Attachment D
Workplace Safety and Insurance Board Clearance Certificate

Appendix 2 to Attachment D
Statutory Declaration by DB Co on CCDC Form 9A (2001)

Appendix 3 to Attachment D
Sub-search of the Title to the Lands

ATTACHMENT E

CONSTRUCTION PERIOD PERFORMANCE CRITERIA

Non-Conformances Discovered in Physical Elements of the Works

Table 1

Reference	Requirement to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-01: Schedule 21 – Construction Period Payments	Physical elements of the Works shall meet the requirements of the Project Agreement, such that: (a) a Critical Qualifying NCR with a 'Pending Status' does not occur; or (b) DB Co Accepted Works are not Contested Non-Conforming Works.	CPQF	Critical	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.
CPPC-02: Schedule 21 – Construction Period Payments	Physical elements of the Works shall meet the requirements of the Project Agreement, such that a Medium Qualifying NCR with a 'Pending Status' does not occur.	CPQF	Medium	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.
CPPC-03: Schedule 21 – Construction Period Payments	Physical elements of the Works shall meet the requirements of the Project Agreement, such that a Minor Qualifying NCR with a 'Pending Status' does not occur.	CPQF	Minor	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.

Non-Conformances that are not physical elements of the Works

Table 2

Reference	Requirement to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-04: Schedule 21 – Construction Period Payments	Works that are not physical elements of the Works shall meet the requirements of the Project Agreement, such that a Critical Qualifying Process NCR with a 'Pending Status' does not occur.	CPQF	Critical	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.
CPPC-05: Schedule 21 – Construction Period Payments	Works that are not physical elements of the Works shall meet the requirements of the Project Agreement, such that a Medium Qualifying Process NCR with a 'Pending Status' does not occur.	CPQF	Medium	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.
CPPC-06: Schedule 21 – Construction Period Payments	Works that are not physical elements of the Works shall meet the requirements of the Project Agreement, such that a Minor Qualifying Process NCR with a 'Pending Status' does not occur.	CPQF	Minor	The first Remedial Period shall not exceed the time set in the NCR to resolve the Non-Conformance. The Remedial Period thereafter shall be the lesser of 20 Business Days (or such a period as approved by the City in its sole discretion) and the first Remedial Period.

Specific Non-Conformances

Table 3

For clarity a deduction under Table 3 is not subject to a deduction under Table 2.

Construction Period Failure Categories defined in Table 3 shall escalate for persistent, ongoing and repeated Non-Conformances.

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-07: Project Agreement Section 11.19	DB Co shall follow protocols as set out in Section 11.19 in accordance with TTMP, Construction Access Management Plan and the Output Specification	CPQF	Medium	10 Business Days
CPPC-08: Project Agreement Section 20.1	DB Co shall provide access to the City, and the Government Entities and their respective representatives to the Lands, the New City Infrastructure, Existing Infrastructure, the New MTO Infrastructure or any workshop	CPQF	Minor	1 Business Day
CPPC-09: Project Agreement Section 20.5	DB Co shall provide access to the Independent Certifier, and all Other Contractors to the Lands, the New City Infrastructure, Existing Infrastructure, the New MTO Infrastructure or any workshop	CPQF	Minor	1 Business Day
CPPC-10: Project Agreement Section 26.2	DB Co shall ensure that there are sufficient numbers of competent staff, including all relevant grades of supervisory staff, engaged in the performance of the Works to ensure the proper performance of the Project Agreement	CPQF	Medium	20 Business Days

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-11: Schedule 12 – Works Scheduling Requirements	DB Co shall prepare and submit PBS-1 at Financial Close.	CPQF	Critical	5 Business Days
CPPC-12: Schedule 12 – Works Scheduling Requirements	DB Co shall prepare and submit, within 180 days after Financial Close, PBS 2.	CPQF	Critical	5 Business Days
CPPC-13: Schedule 12 – Works Scheduling Requirements	DB Co shall prepare and submit a Recovery Schedule in accordance with the requirements of Schedule 12 – Works Scheduling Requirements, no later than the end of the subsequent reporting period.	CPQF	Critical	5 Business Days
CPPC-14: Schedule 10 – Review Procedure	Works Schedules shall not receive a ‘Critical Comment’ or ‘Major Comment’ from the City more than once.	CPQF	Critical	n/a

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-15: Schedule 10 – Review Procedure	The following Works Submittals shall not receive a “MAJOR COMMENT” or “CRITICAL COMMENT” from the City more than two times in a row for the same reason: (a) Design Management Plan, Construction Management Plan, Traffic and Transit Management Plan, Environmental Management Plan, Design Certificates, Construction Certificates, from Appendix A to Schedule 10 – Review Procedure; and (b) the Geotechnical Instrumentation Monitoring Plan from Appendix A to Schedule 10 – Review Procedure.	CPQF	Medium	5 Business Days
CPPC-16: Schedule 17 – Environmental Obligations, Appendix B	Submission of Environmental Management Plan Updates	CPQF	Medium	5 Business Days
CPPC-17: Schedule 17 – Environmental Obligations, Appendix B	Submission of Annual Compliance Monitoring Report	CPQF	Medium	5 Business Days

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-18: Schedule 17 – Environmental Obligations, Appendix B	Submission Independent Environmental Audit	CPQF	Medium	5 Business Days
CPPC-19: Schedule 17 – Environmental Obligations, Appendix B	Submission of Sustainability Annual Report Card	CPQF	Medium	5 Business Days
CPPC-20: Schedule 17 – Environmental Obligations, Appendix B	Submission Independent Environmental Audit	CPQF	Medium	5 Business Days
CPPC-21: Schedule 17 – Environmental Obligations, Section 8.4	DB Co shall ensure during the Construction Period, air-borne and ground- borne noise and vibration impacts on Sensitive Receivers do not exceed the Applicable Noise and Vibration Requirements and Additional Sensitive Receiver Performance Requirements	CPQF	Critical	1 Business Day, or longer as agreed to by the City acting reasonably.
CPPC-22: Schedule 18 – Communications and Stakeholder Engagement Obligations, Part 4	DB Co shall deliver communications and stakeholder engagement activities in accordance with Schedule 18 Part 4	CPQF	Minor	1 Business Day
CPPC-23: Schedule 18 – Communications and Stakeholder Engagement Obligations, Section 5.1	DB Co shall provide Notification to the City and a draft public notification in accordance with the requirements of Schedule 18 Section 5.1	CPQF	Minor	1 Business Day

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-24: Schedule 11 – Integrated Management System Requirements, Section 4.4	DB Co shall prepare and submit each Inspection and Test Plan in respect of the Works to the City pursuant to Schedule 10 - Review Procedure at least 15 Business Days prior to performing the relevant Works.	CPQF	Minor	1 Business Day
CPPC-25: Schedule 11 – Integrated Management System Requirements, Section 5.1(b)	DB Co shall provide an updated IMS Audit Plan at twelve month intervals following submission of the initial IMS Audit Plan.	CPQF	Medium	20 Business Days
CPPC-26: Schedule 11 – Integrated Management System Requirements, Section 5.1(b)	At each occurrence of DB Co failing to follow the IMS Audit Plan without the prior agreement in writing of the City	CPQF	Medium	20 Business Days
CPPC-27: Schedule 11 – Integrated Management System Requirements, Section 5.2(c)	All IMS Non-Conformances identified by the Internal IMS Audits must be addressed and corrective measures implemented by DB Co. DB Co shall provide final audit reports to the City within 10 Business Days of the closing of the audits.	CPQF	Medium	5 Business Days
CPPC-28: Schedule 11 – Integrated Management System Requirements, Section 5.4(a)(ii)	DB Co shall prepare a Corrective Action plan, and submit it to the City within 20 Business Days of the closing of the City's IMS Audit. At each occurrence of DB Co failing to prepare a Corrective Action plan within the required time period.	CPQF	Minor	1 Business Day

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-29: Schedule 11 – Integrated Management System Requirements, Section 7.3(a)	DB Co shall resolve Non Conformances within the response time specified on the Non Conformance Reports.	CPQF	Minor	5 Business Days
CPPC-30: Schedule 26 – Record Provisions, Section 1.1	DB Co shall keep and maintain records in accordance with Schedule 26 Section 1.1	CPQF	Minor	10 Business Days

Specific Non-Conformances for Lane Closures

Table 4

Non-Conformances in the Works Requiring Immediate Action

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-31 Schedule 15-2 Part 9, Part C Article 4.4 table 4.4.1	Lane Closures shall not start earlier than the Permitted Periods for Closures on Highway 416 and 417 Mainline	CPQF	Medium	Twenty (20) minutes
CPPC-32 Schedule 15-2 Part 9, Part C Article 4.4 table 4.4.1	Lane Closures shall not end later than the Permitted Periods for Closures on Highway 416 and 417 Mainline.	CPQF	Medium	Twenty (20) minutes
CPPC-33 Schedule 15-2 Part 9, Part C Article 4.4 table 4.4.2	Lane Closures shall not start earlier than the Permitted Periods for Closures on Crossing Roads	CPQF	Medium	Twenty (20) minutes
CPPC-34 Schedule 15-2 Part 9, Part C Article 4.4 table 4.4.2	Lane Closures shall not end later than the Permitted Periods for Closures on Crossing Roads	CPQF	Medium	Twenty (20) minutes
CPPC-35 Schedule 15-2 Part 9, Part C Article 4.4 table 4.4.3	Lane Closures shall not start earlier than the Permitted Periods for Closures on Highway 416 and 417 Ramps	CPQF	Medium	Twenty (20) minutes
CPPC-36 Schedule	Lane Closures shall not end later than the Permitted Periods for Closures on	CPQF	Medium	Twenty (20) minutes

Reference	Requirements to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
15-2 Part 9, Part C Article 4.4 table 4.4.3	Highway 416 and 417 Ramps.			
CPPC-37 Schedule 15-2 Part 9, Part C Article 4.5	Full Closure shall not start earlier than Permitted Periods for Closures.	CPQF	Critical	Two (2) hours
CPPC-38 Schedule 15-2 Part 9, Part C Article 4.5	Full Closure shall not end later than Permitted Periods for Closures.	CPQF	Critical	Two (2) hours

ATTACHMENT F

CREDIT RULES

1. CREDIT RULES FOR THE EVALUATION OF EARNED VALUE

1.1 Purpose of Credit Rules

- (a) The Credit Rules set out requirements agreed between the City and DB Co for use and interpretation of the Earned Value Measurement Techniques, pursuant to this Schedule 21.

1.2 Change of Credit Rules

- (a) In the event that DB Co or the City propose a change to the Credit Rules, the Independent Certifier may agree to such proposed change to the Credit Rule, provided that:
 - (i) any proposed change to the Credit Rules will result in revised Credit Rules that:
 - (A) continue to meet the Earned Value Measurement Techniques; and
 - (B) follow the principles, guidance, and intent of the Credit Rules set out in this Attachment F, wherever possible;
 - (ii) any proposed change to the Credit Rules is subject to consultation with the City and DB Co at least three months prior to the first Construction Period that uses those revised Credit Rules;
 - (iii) the Independent Certifier considers any responses made by the City and DB Co to a proposed change to the Credit Rules and the Independent Certifier provides a report justifying its decision regarding acceptance or rejection of any proposal to change the Credit Rules; and
 - (iv) prior to the start of the first Construction Period that is to use the revised Credit Rules for the evaluation of Earned Value:
 - (A) the proposed changes to the Credit Rules are agreed to by the Independent Certifier; and
 - (B) both the City and DB Co receive the revised Credit Rules from the Independent Certifier.

1.3 Selection of Measurement Methods

- (a) In principle, when selecting the appropriate measurement methods from the Earned Value Measurement Techniques, the following principles shall be applied:
 - (i) for tangible work or tasks taking three Construction Period Months or more to perform, the measurement methods shall be considered in the following decreasing order of preference:
 - (A) firstly, activity completion and physical measurement using the fixed formula 0/100 method; and
 - (B) secondly, weighted milestone;

- (ii) for tangible work or tasks taking one or two Construction Period Months to perform, the measurement methods shall be considered in the following decreasing order of preference:
 - (A) activity completion and physical measurement using the fixed formula 0/100 method; and
- (iii) for intangible work or tasks, the measurement methods shall be considered in the following decreasing order of preference:
 - (A) firstly, apportioned effort; and
 - (B) secondly, only where apportioned effort is not possible, level of effort.
- (b) Table 1 sets out the measurement methods that shall be used from the Earned Value Measurement Techniques for specific cost categories, unless there are technical reasons preventing these measurement methods from being used. The specific cost categories in Table 1 are set out in ‘Standard Cost Codes for Capital Projects – Definitions’, US Federal Transportation Administration.

Table 1: Earned Value measurement methods for specific cost categories		
Standard Cost Code	Description	Measurement Method from the Earned Value Measurement Techniques
10	Guideway	
10.01	Guideway: at-grade exclusive right-of-way (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.04	Guideway: aerial structure (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.05	Guideway: Built-up fill	Activity completion and physical measurement using the fixed formula 0/100 method
10.06	Guideway: underground cut & cover (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.07	Guideway: underground tunnel (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.09	Track: Direct fixation	Activity completion and physical measurement using the fixed formula 0/100 method
10.10	Track: Embedded	Activity completion and physical measurement using the fixed formula 0/100 method
10.11	Track: Ballasted	Activity completion and physical measurement using the fixed formula 0/100 method
10.12	Track: Special (switches, turnouts)	Activity completion and physical measurement using the fixed formula 0/100 method
20	Stations, Stops, Terminals, Intermodals	
20.01	At-grade station; stop; shelter; mall; terminal; platform	Activity completion and physical measurement using the fixed formula 0/100 method
20.03	Underground station; stop; shelter; mall;	Activity completion and physical

Table 1: Earned Value measurement methods for specific cost categories		
Standard Cost Code	Description	Measurement Method from the Earned Value Measurement Techniques
	terminal; platform	measurement using the fixed formula 0/100 method
20.05	Joint development	Activity completion and physical measurement using the fixed formula 0/100 method
30	Support Facilities: Yards, Shops and Admin Buildings	
30.01	Administration Building: Office, sales, storage, revenue counting	Activity completion and physical measurement using the fixed formula 0/100 method
30.03	Heavy maintenance facility	Activity completion and physical measurement using the fixed formula 0/100 method
30.05	Yard and Yard Track	Activity completion and physical measurement using the fixed formula 0/100 method
40	Sitework and Special Conditions	
40.01	Demolition; clearing; earthwork	Activity completion and physical measurement using the fixed formula 0/100 method
40.02	Site utilities; utility relocation	Activity completion and physical measurement using the fixed formula 0/100 method
40.03	Hazardous material; contaminated soil mitigation; ground water treatments	Activity completion and physical measurement using the fixed formula 0/100 method
40.04	Environmental mitigation, e.g. wetlands, historic/archeologic, parks	Activity completion and physical measurement using the fixed formula 0/100 method
40.05	Site structures including retaining walls; sound walls and other structures	Activity completion and physical measurement using the fixed formula 0/100 method
40.06	Pedestrian and bike access and accommodation; landscaping	Activity completion and physical measurement using the fixed formula 0/100 method
40.07	Automobile; bus; van access ways including roads; parking lots	Activity completion and physical measurement using the fixed formula 0/100 method
40.08	Temporary facilities	Activity completion and physical measurement using the fixed formula 0/100 method
50	Systems	
50.01	Train control and signals	Activity completion and physical measurement using the fixed formula 0/100 method
50.02	Traffic signals and crossing protection	Activity completion and physical measurement using the fixed formula 0/100 method
50.03	Traction power supply and substations	Activity completion and physical measurement using the fixed formula 0/100 method
50.04	Traction power distribution and catenary	Activity completion and physical measurement using the fixed formula 0/100 method

Table 1: Earned Value measurement methods for specific cost categories		
Standard Cost Code	Description	Measurement Method from the Earned Value Measurement Techniques
		method
50.05	Communications	Activity completion and physical measurement using the fixed formula 0/100 method
50.06	Fare collection system and equipment	Activity completion and physical measurement using the fixed formula 0/100 method
50.07	Central control	Activity completion and physical measurement using the fixed formula 0/100 method
80	Professional Services and Agency Costs	
80.01	Preliminary design	Weighted milestone
80.02	Final design	Weighted milestone
80.03	Project management for design and construction	Apportioned effort
80.04	Construction administration and management	Apportioned effort
80.05	Professional liability and other insurance costs	Weighted milestone
80.06	Legal; permits; review fees by other agencies, cities, etc;	Weighted milestone
80.07	Surveys, testing (quality related), investigation, inspection	Weighted milestone or apportioned effort
80.08	Start up; testing and commissioning	Weighted milestone or apportioned effort

- (c) The measurement methods associated with procurement of materials shall be in accordance with the following principles:
- (i) except as set out in Section 1.3(c)(ii), the costs of materials used in construction shall be included in the cost of each construction task and shall be evaluated for the purposes of Earned Value as part of each construction task using physical measurement; and
 - (ii) the costs of rail and large long-lead equipment manufactured off-site before installation, such as transformers and packaged air conditioning units, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by DB Co to the supplier will not be credited for the purposes of Earned Value until the rail or large equipment manufactured off-site is delivered to the Lands or a bonded warehouse.
- (d) The measurement methods associated with procurement of plant, such as cranes and road vehicles, shall be in accordance with the following principles:
- (i) the costs of plant, such as cranes and road vehicles, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by DB Co to the supplier will not be credited for the purposes of Earned Value until the plant is delivered to the Lands or a bonded warehouse.
- (e) In order to make the measurement of Earned Value more efficient during mobilization, DB Co may choose to identify a tranche of its mobilization cost, the amount of which will be equal to the mobilization cost agreed to between DB Co and the Lenders or Lenders' Consultant of the Cost of

the Works that shall be automatically credited for the purposes of measuring Earned Value at Financial Close (the “**Mobilization Credit**”), where:

- (i) the sum of the costs identified to the Mobilization Credit and the costs identified to the cost codes from Table 1 shall remain equal to the Cost of the Works;
- (ii) the scope of activity associated with the Mobilization Credit shall be documented by DB Co to the satisfaction of the Independent Certifier before the end of the second Construction Period Month in order to avoid double counting with the Earned Value for activities that are not included within the Mobilization Credit; and
- (iii) the Earned Value for the activities included within the Mobilization Credit shall be credited as Earned Value without using a measurement method from the Earned Value Management Techniques.

ATTACHMENT G

Intentionally Deleted

SCHEDULE 22

VARIATION PROCEDURE

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
 - (ii) “**DB Co Variation Notice**” has the meaning given in Section 2.1(a) of this Schedule 22.
 - (iii) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
 - (iv) “**Estimate**” has the meaning given in Section 1.4(a) of this Schedule 22.
 - (v) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
 - (vi) “**Variation Confirmation**” has the meaning given in Section 1.7(a)(ii) of this Schedule 22.
 - (vii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the City Representative directing DB Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (viii) “**Variation Enquiry**” has the meaning given in Section 1.3(a) of this Schedule 22.

1.2 General

- (a) City has the right from time to time to propose and require DB Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22 provided that City shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which City is obligated to proceed with a Variation.
- (b) City shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.
- (c) DB Co will not be entitled to any payment, compensation or extension of the Scheduled Substantial Completion Dates or other schedule milestones for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this

Schedule 22.

1.3 Variation Enquiry

- (a) If City proposes or is obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation it shall deliver to DB Co a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
 - (i) describe the proposed Variation with sufficient detail to enable DB Co to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether City intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Guaranteed Price, (and, if applicable, with a request for DB Co to obtain financing for all or part of the Variation), or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of this Project Agreement (including the Output Specifications or the DB Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to this Project Agreement (including the Output Specifications or the DB Co Proposal Extracts) that may be necessary to accommodate the Variation.

1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, DB Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6.

1.5 DB Co Grounds for Objection

- (a) DB Co may only refuse to deliver an Estimate if DB Co can demonstrate to City’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
 - (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
 - (ii) the implementation of the Variation would:
 - (A) infringe Applicable Law;
 - (B) cause to be revoked any of the existing Permits, Licences, Approvals or Agreements required by DB Co to perform the Works, and any such Permit, Licence, Approval or Agreement is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require any new Permits, Licences, Approvals or Agreements for DB Co to

perform the Works, any of which will not, using commercially reasonable efforts by DB Co or City, as applicable, be obtainable;

- (iii) the proposed Variation would have a material and adverse effect on performance of the Works (except those Works which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
 - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
 - (v) City does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
 - (vi) the Variation would, if implemented, result in a change in the essential nature of the Project;
 - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable DB Co to prepare an Estimate in respect thereof); or
 - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by DB Co despite commercially reasonable efforts.
- (b) If DB Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), DB Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to City a written notice specifying the grounds upon which DB Co rejects the Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless City in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to City's reasonable satisfaction:
- (i) the steps DB Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
 - (ii) any impact on Scheduled Substantial Completion Dates, and any other schedule impact on Project and completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iii) any impact on the performance of the Works and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iv) any amendments to this Project Agreement or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure

that (save for the obligation of City to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;

- (v) any impact on the Direct Costs of DB Co and the Subcontractors, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on DB Co's cash flows from incurring, reducing or avoiding such costs (whether financed by DB Co or City); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on DB Co's cash flows from incurring, reducing or avoiding such costs;
- (vi) either, subject to Section 1.9:
 - (A) a confirmation that the proposed Variation will not affect DB Co's existing financing or that DB Co's existing financing is adequate to implement the Variation; or
 - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (vii) DB Co's preliminary indication of the potential increase or decrease, if any, to the Guaranteed Price;
- (viii) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which DB Co must receive a Variation Confirmation and obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
- (ix) the proposed methods of certification of any aspect of the Works required by the Variation if not covered by the provisions of this Project Agreement,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, DB Co shall include sufficient information to demonstrate to City's satisfaction, acting reasonably, that:
 - (i) DB Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) except as otherwise set out herein, all costs of DB Co and the Subcontractors are limited to Direct Costs;

- (iii) DB Co and the Construction Contractor shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of DB Co or the Construction Contractor is calculated on any other margin of DB Co or the Construction Contractor), and no other margins or mark-ups;
 - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to DB Co's Direct Costs shall only be chargeable on Direct Costs of DB Co, such that DB Co shall not charge any margins on any amounts charged by the Construction Contractor;
 - (v) all costs of providing Works, including Capital Expenditures, reflect:
 - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
 - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
 - (C) any and all changes in risk allocation;
 - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
 - (vii) DB Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Works, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) DB Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than DB Co would apply if all costs incurred were to its own account without recourse to City, including using commercially reasonable efforts to mitigate such costs.
- (d) As soon as practicable, and in any event not more than 15 Business Days after City receives an Estimate, DB Co and City shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) If City would be required by Applicable Law or any policy applicable to City to competitively tender any contract in relation to the proposed Variation, City may require DB Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
- (f) City may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case DB Co shall, as soon as

practicable and in any event not more than 10 Business Days after receipt of such modification, notify City in writing of any consequential changes to the Estimate.

- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

1.7 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 - Dispute Resolution Procedure, City shall either:
 - (i) subject to Sections 1.2(b) and 1.7(e), withdraw the Variation Enquiry by written notice to DB Co; or
 - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to DB Co obtaining financing pursuant to Section 1.8.
- (b) If City does not issue a Variation Confirmation within such 15 Business Days, then, subject to Sections 1.2(b) and 1.7(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon DB Co obtaining financing pursuant to Section 1.8:
 - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of the Key Works Milestones and Work Schedules, and including provision for payment to DB Co as provided in Section 1.10;
 - (ii) DB Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.7(c)(i), all provisions of this Project Agreement applicable to the Works shall apply to the Works as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.7(c)(i).
- (d) If a Variation Confirmation is subject to DB Co obtaining financing pursuant to Section 1.8, then the Variation Confirmation shall not be effective until:
 - (i) DB Co obtains such financing acceptable to City in its sole discretion; or
 - (ii) City in its sole discretion waives such requirement.

- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
 - (i) the determination of whether or not to proceed with a Variation shall at all times be at City's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined by Schedule 27 - Dispute Resolution Procedure; and
 - (ii) City may at any time withdraw a Variation Enquiry and, subject to Section 1.7(f), City shall not be obligated to DB Co in respect of a Variation until such time as City in its sole discretion issues a Variation Confirmation and, if applicable, DB Co has obtained the financing requested by City or City has waived such requirement, provided that City may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where City is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.
- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which DB Co has used commercially reasonable efforts to produce a fair and accurate Estimate, City shall reimburse DB Co for all Direct Costs reasonably and properly incurred by DB Co in connection with preparing the Estimate.

1.8 Financing

- (a) If DB Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if City requests DB Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to DB Co obtaining financing. In such event, DB Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to DB Co, the Lenders and City, provided that, DB Co shall not be required to seek financing from any source other than the Lenders.
- (b) If DB Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to DB Co and City within 60 days of the date that City issues the Variation Confirmation, then DB Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless City, in its sole discretion, waives the requirement for financing or unless City is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) Subject to Section 1.9, if DB Co obtains an offer of financing on terms reasonably satisfactory to DB Co, DB Co shall provide City with details of such financing, and City shall, in its sole discretion, determine whether DB Co should proceed with such financing. If City determines that DB Co should not proceed with such financing, then DB Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless City, in its sole discretion, waives the requirement for financing or unless City is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) Subject to Section 1.9, City may at any time withdraw the requirement for DB Co to use

commercially reasonable efforts to obtain financing, after which DB Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless City in its sole discretion waives the requirement for financing or unless City is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.

- (e) If City waives the requirement for financing or if DB Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.8(b), 1.8(c) or 1.8(d), then DB Co shall proceed with the Variation as set out in the Variation Confirmation and City shall pay for the Variation as provided for in Section 1.10(a)(ii).

1.9 Increase or Decrease in the Cost of the Financing

- (a) If there is an increase or a decrease in the Cost of the Financing as a result of a Variation, the Guaranteed Price shall be increased or decreased by the increase or decrease to the Cost of the Financing. DB Co shall provide the calculation of the increase or decrease in the Cost of the Financing, together with a certificate of the Lenders' Agent verifying such calculation. Where the increase in the Cost of the Financing includes breakage costs, but the impact of the Variation on the Cost of the Financing could also be accommodated without incurring breakage costs, calculations for both options shall be provided to City, together with a certificate of the Lenders' Agent addressed to DB Co (which will expressly provide that the certificate may be relied upon by City) verifying such calculations. City shall, in its Sole Discretion, within 5 Business Days of receiving such certificate from the Lenders' Agent, select its preferred option by providing written notice to DB Co and the Lenders' Agent. For greater certainty, the increases or decreases in the Cost of the Financing shall be calculated in a commercially reasonable manner and in accordance with the Lenders standard banking practices and the Lending Agreements, and without regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices.

1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by DB Co or has been waived by City, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
 - (i) the Guaranteed Price shall be adjusted as set out in the Variation Confirmation;
 - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by DB Co shall be paid as follows:
 - (A) City shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by City and DB Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by DB Co in carrying out the Variation to the extent borne by City; and
 - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, DB Co shall

provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event City and DB Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with DB Co, subject to the terms of any contract between DB Co and that third party in relation to the implementation of the Variation having been approved by City (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 - Dispute Resolution Procedure shall determine a payment schedule which would enable DB Co to be funded by City in time to make payments to that third party in accordance with its contract with DB Co.

- (b) City shall make payment to DB Co within 20 Business Days of receipt by City of invoices presented to City in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by City in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Act* (Ontario), as applicable.
- (d) DB Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by DB Co, City shall provide to DB Co copies of any consent or approval issued by City in connection with a proposed Variation.

1.11 Reduction in Works

- (a) If a Variation involves any reduction in Works which results in savings in Direct Costs to DB Co, such savings shall result in a reduction in the compensation payable to DB Co under this Project Agreement in an amount equal to such reduction in Direct Costs, and a Substantial Completion Payment or Substantial Completion Payments, or the balance of the Guaranteed Price, as applicable, shall be reduced accordingly.

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by City and DB Co or if there is a Dispute in relation thereto or if City, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then City may issue a Variation Directive and, following receipt of the Variation Directive:
 - (i) DB Co shall promptly proceed with the Variation;
 - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
 - (iii) pending final determination of the valuation and time extensions, if any, required in

connection with such Variation, the Independent Certifier, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 - Dispute Resolution Procedure,

provided that, City shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

2. DB CO VARIATIONS

2.1 General

- (a) DB Co shall deliver to City a written notice (a “**DB Co Variation Notice**”) for each Variation proposed by DB Co.

2.2 DB Co Variation Notice

- (a) A DB Co Variation Notice shall:
 - (i) set out details of the proposed Variation in sufficient detail to enable City to evaluate it in full;
 - (ii) specify DB Co’s reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to City; and
 - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If City, in its sole discretion, elects to consider the Variation proposed by DB Co, City may issue to DB Co a Variation Enquiry and the procedure set out in Section 1 will apply.

3. SMALL WORKS

3.1 General

- (a) DB Co shall carry out all Small Works requested by City.
- (b) If Small Works are requested by City, DB Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide City with a price for carrying out the Small Works.
- (c) If DB Co’s price is accepted by City, in its sole discretion, DB Co shall carry out the Small Works for such price.
- (d) City may at any time, in its sole discretion, including if City does not accept the price proposed by DB Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 22, other than this Section 3, shall apply.
- (e) DB Co’s price shall include only its Direct Costs, as calculated in accordance with

Appendix A, together with applicable margins as set out in Appendix B.

3.2 DB Co to Minimize Inconvenience

- (a) DB Co shall notify City of the estimated duration of any Small Works so that City and DB Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to City. DB Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

APPENDIX A

CALCULATION OF DIRECT COSTS

1. DIRECT COSTS

1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by DB Co or the Subcontractors, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which DB Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:

- (i) wages and benefits paid for labour in the direct employ of DB Co or the Subcontractors while performing that part of the Works on Site;
- (ii) salaries, wages and benefits of DB Co’s or the Subcontractors’ personnel when stationed at the Site office in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of DB Co’s or the Subcontractors’ office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid by DB Co or a DB Co Party to employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) travel and subsistence expenses of DB Co’s or the Subcontractors’ officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
- (vi) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vii) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by DB Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (viii) deposits lost;
- (ix) the amount of all Subcontracts with the Subcontractors;

- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by City, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A and without limiting the obligation of City to pay HST under this Project Agreement, Taxes, but excluding:
 - (A) HST;
 - (B) taxes imposed on DB Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of DB Co or a Subcontractor;
 - (D) taxes relating to withholdings on any payments by DB Co or a Subcontractor; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Works;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which DB Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of DB Co or Construction Contractor reasonably and properly incurred by DB Co or Construction Contractor arising as a direct result of any Variation reducing the scope of the Works, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvi) the cost of financing as calculated pursuant to Section 1.9 of Schedule 22, including additional financing costs related to any delay caused by the implementation of the Variation;
- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to City;
- (xviii) the cost of any additional insurance or performance security required or approved by City;
- (xix) the cost of obtaining all DB Co Permits, Licences, Approvals and Agreements; and

- (xx) except as specified in Section 1.2(vii), reasonable fees and disbursements of Project Co's legal advisors, reasonable fees and disbursements of DB Co's legal and technical advisors.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Works as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers; provided this shall not restrict the cost of extending hire of equipment already in situ;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by DB Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed **[REDACTED]** the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by **[REDACTED]** hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in Ottawa, Ontario;
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of DB Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Works;
- (vi) the amount paid for salaries, wages and benefits of DB Co's or the Subcontractors' personnel shall reflect commercially competitive rates available in Ottawa; and
- (vii) the Direct Cost shall not include any reasonable fees and disbursements of Project Co's legal advisors incurred in connection with Small Works or the preparation of the Estimate.

APPENDIX B
APPLICABLE
MARGINS

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	For Projects under \$[REDACTED]	For Projects between \$[REDACTED] and \$[REDACTED]	For Projects over \$[REDACTED]
DB Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
DB Co and Construction Contractor re: Cash Allowance Items	[REDACTED]%	[REDACTED]%	[REDACTED]%

**SCHEDULE 23
COMPENSATION ON TERMINATION**

1 DEFINITIONS

1.1 Definitions

- (a) All capitalized terms not otherwise defined in this Schedule shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:
- (b) “**City Default Termination Sum**” has the meaning given in Section 3.1(c) of this Schedule 23.
- (c) “**DB Co Amount**” means any amount payable to DB Co as a return and/or profit to DB Co shown in the Financial Model, including for greater certainty in respect of any loans made or capital contributed to DB Co by any Affiliate of DB Co or a DB Co Party, prorated by a fraction, the numerator of which is the period between the date of commencement of the Works and the Termination Date, and the denominator of which is the period between the date of commencement of the Works and the latest Scheduled Substantial Completion Date.
- (d) “**DB Co Default Termination Sum**” has the meaning given in Section 2.1(b) of this Schedule 23.
- (e) “**Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Lenders to DB Co, together with all interest accrued thereon at that time, provided that at any time where any portion of the interest payable to the Lenders is subject to the Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Lenders shall be calculated based on the fixed rate payable by DB Co under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Lenders under the Project Agreement shall be construed accordingly. For greater certainty, the Debt Amount excludes the Debt Makewhole.
- (f) “**Debt Makewhole**” means, (i) at any time, any amount (other than the Debt Amount) then due and payable to the Lenders under the Lending Agreements with respect to the Debt Amount, including any “make whole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which DB Co is obligated to pay to the Lenders pursuant to the Lending Agreements with respect to the Debt Amount; and (ii) any swap breakage costs (less breakage benefits), if any, then due and payable to the Hedge Provider(s) under the Hedging Agreement(s) entered into with respect to the Debt Amount.
- (g) “**Demobilization Costs**” means all reasonable costs of DB Co associated with the demobilization of the Works as a result of the termination of the Project Agreement.
- (h) “**Employee Termination Payments**” means termination payments which are required under Applicable Law to be made to employees of DB Co or any DB Co Party as a direct result of terminating the Project Agreement (provided that DB Co or the relevant DB Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in

calculating such amount, no account should be taken of any liabilities and obligations of DB Co or the relevant DB Co Party arising out of:

- (i) contracts of employment or other agreements or arrangements entered into by DB Co or the relevant DB Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
 - (ii) contracts of employment or other agreements or arrangements entered into by DB Co or the relevant DB Co Party other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (i) **"Invoice Date"** means the date that is the later of:
- (i) the date on which the City receives an invoice from DB Co for the Non-Default Termination Sum or City Default Termination Sum, as the case may be; and
 - (ii) the date on which the City receives the supporting evidence required pursuant to Section 4.1(a) of this Schedule 23.
- (j) **"Non-Default Termination Sum"** has the meaning given in Section 3.1(c) of this Schedule 23.
- (k) **"Subcontractor Losses"** means, subject to DB Co's obligations under the Project Agreement to limit any compensation to Subcontractors, the amount reasonably and properly payable by DB Co to the Construction Contractor under the terms of the Design and Construction Contract as a direct result of the termination of the Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that DB Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount; provided that, no account should be taken of any liabilities and obligations of DB Co to the Subcontractors arising out of:
- (i) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
 - (ii) agreements or arrangements entered into by DB Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties' obligations in relation to the Project; or
 - (iii) agreements or arrangements entered into by DB Co or the Subcontractors other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.

2 COMPENSATION ON TERMINATION FOR DB CO DEFAULT

2.1 Compensation

- (a) If City terminates the Project Agreement pursuant to Section 36.3(a) of the Project Agreement, City shall pay the DB Co Default Termination Sum to DB Co.
- (b) The “**DB Co Default Termination Sum**” shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) all Construction Period Payments and Substantial Completion Payments paid by City on or before the Termination Date, plus all Construction Period Deductions and Lane Closure Adjustments (other than any Construction Period Deductions or Lane Closure Adjustments which, prior to the Termination Date, were set-off against a payment to DB Co by the City made on or before the Termination Date or which have otherwise been paid by or on behalf of DB Co on or before the Termination Date);
 - (ii) City’s estimate of the cost to complete the Works, including the cost to remedy any defective or deficient Works determined on a reasonable basis in consultation with the Independent Certifier and other consultants and including all reasonable and proper costs incurred by City in re-tendering the Works or any portion thereof;
 - (iii) City’s estimate of the aggregate of all Direct Losses suffered, sustained or incurred by City as a result of, in respect of, or arising out of the event or events which resulted in the termination of the Project Agreement and out of the termination together with all costs of entering into a new construction contract to complete the Works, including any warranty obligations for the Works in place and to be performed, on substantially the same terms and conditions as the Project Agreement;
 - (iv) any Completion Holdback as at the time the DB Co Default Termination Sum is required to be made; and
 - (v) the Legislative Holdback required to be maintained by City as at the time the DB Co Default Termination Sum is required to be made, which amount will be paid by City in accordance with the *Construction Act* (Ontario).
- (c) To the extent that any amounts that City has estimated or determined pursuant to Sections 2.1(b)(ii), 2.1(b)(iii) or 2.1(b)(iv) above, are in excess of what is required by City to complete the Works or compensate for Direct Losses, the Completion Holdback or the Legislative Holdback, as applicable the City shall promptly return such excess amounts to DB Co.
- (d) City shall pay the DB Co Default Termination Sum in accordance with Article 4 of this Schedule 23.

3 COMPENSATION ON NON-DEFAULT TERMINATION OR TERMINATION FOR CITY DEFAULT

3.1 Compensation

- (a) If DB Co terminates the Project Agreement pursuant to Sections 37.2(a)(ii) of the Project Agreement, the City shall pay to DB Co the City Default Termination Sum.
- (b) If the Project Agreement is terminated pursuant to Sections 38.1, 38.2 or 38.3 of the Project Agreement, the City shall pay to DB Co the Non-Default Termination Sum.
- (c) The “**Non-Default Termination Sum**” or “**City Default Termination Sum**”, as the case may be, shall be an amount equal to the aggregate, without duplication, of:
 - (i) all unpaid Construction Period Payments and Substantial Completion Payments properly due and payable under the Project Agreement to and including the Termination Date, any other amounts owing by the City to DB Co under the terms of the Project Agreement as of the Termination Date, and any Cost of the Financing directly related to such Construction Period Payments and Substantial Completion Payments, to the extent not funded under the Lending Agreements as part of the Debt Amount;
 - (ii) all Demobilization Costs, Employee Termination Payments and Subcontractor Losses;
 - (iii) the Debt Amount, plus the Debt Makewhole, each calculated as at the date of payment of the Non-Default Termination Sum or City Default Termination Sum, as the case may be;
 - (iv) the DB Co Amount calculated as at the date of payment of the Non-Default Termination Sum or City Default Termination Sum, as the case may be; and
 - (v) all other Direct Losses suffered, sustained or incurred by DB Co as a result of, or arising out of, the event or events which have resulted in the termination of the Project Agreement;less the aggregate of:
 - (vi) any Completion Holdback as at the time the Non-Default Termination Sum or City Default Termination Sum, as the case may be, is required to be made; and
 - (vii) any Legislative Holdback required to be maintained by City at the time the Non-Default Termination Sum or City Default Termination Sum, as the case may be, is required to be made.
- (d) To the extent that any amounts that City has determined pursuant to Section 3.1(c)(vi) or 3.1(c)(vii) above are in excess of what is required by City to holdback under the Project Agreement or maintain as Completion Holdback or Legislative Holdback, as applicable, City shall promptly return such excess amounts to DB Co.

- (e) City shall pay the Non-Default Termination Sum or City Default Termination Sum, as the case may be, in accordance with Article 4 of this Schedule 23.

4 GENERAL

4.1 Payment

- (a) In the event of a termination referred to in Section 3.1(a) or (b) of this Schedule 23, as soon as practicable, and in any event, within 60 days, after the Termination Date, DB Co shall give to City an invoice for the Non-Default Termination Sum or City Default Termination Sum, as the case may be, (reasonably estimated if not then known) and sufficient supporting evidence, reasonably satisfactory to City, justifying the amount of the Non-Default Termination Sum or City Default Termination Sum, as the case may be, including a detailed breakdown of each of the individual items comprising such sum. To the extent the Non-Default Termination Sum or City Default Termination Sum, as the case may be, is based on estimates of cost, the Parties will readjust as soon as such estimated costs can be determined.
- (b) City shall:
 - (i) pay to DB Co the Non-Default Termination Sum or City Default Termination Sum, as the case may be, within 60 days after the Invoice Date and so long as all demobilization of the Works has been completed; and
 - (ii) indemnify DB Co as provided in Section 46.2(c) of the Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
 - (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and
 - (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (c) In the event of a termination referred to in Section 2.1(a) of this Schedule 23, as soon as practicable, and in any event, within 120 days after the Termination Date, City shall calculate and notify DB Co of the DB Co Default Termination Sum under Section 2.1(b) of this Schedule 23, and shall deliver to DB Co sufficient supporting evidence reasonably satisfactory to DB Co.
- (d) City shall pay to DB Co the DB Co Default Termination Sum as soon as reasonably practicable, and in any event within 30 days after delivering the notice described in Section 4.1(c) of this Schedule 23.

4.2 Costs

The costs and expenses to be taken into account in the calculation of the Non-Default Termination Sum or City Default Termination Sum, as the case may be, due pursuant to this

Schedule 23 shall only be such costs and expenses that are reasonable and proper in quantum and that have been or will be reasonably and properly incurred.

4.3 Undisputed Amounts

Either City or DB Co may dispute the calculation of any Compensation Payment and in the event of a dispute, any undisputed amount shall be paid in accordance with this Schedule 23 and the disputed amount shall be dealt with in accordance with Schedule 27- Dispute Resolution Procedure.

4.4 Outstanding Debt Amount

- (a) Subject to Section 4.3 of this Schedule 23, the City shall be entitled to rely on a certificate of the Lenders' Agent as conclusive evidence as to the Debt Amount and Debt Makewhole, as applicable, outstanding at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Debt Amount or Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge City's obligation to pay such portion of compensation due to DB Co that is equal to the amount acknowledged or confirmed.

4.5 Set-off

City shall be entitled to set off against the Non-Default Termination Sum, the City Default Termination Sum, or the DB Co Default Termination Sum, such amounts not already taken into account in calculating the relevant Compensation Payment that City is entitled to set off or withhold pursuant to the Project Agreement, provided that the amount paid to DB Co on account of the Non-Default Termination Sum or City Default Termination Sum, as the case may be, shall never be less than the aggregate of the Debt Amount and the Debt Makewhole Amount.

4.6 Full and Final Settlement

- (a) Except as otherwise provided in Section 4.6(b) of this Schedule 23, any compensation paid pursuant to Section 2.1 or Section 3.1 of this Schedule 23 in the total amount owing thereunder shall be in full and final settlement of any claims, demands and proceedings of DB Co and the City and each shall be released from all liability to the other in relation to any breaches or other events leading to the termination of the Project Agreement and the circumstances leading to such breach or termination, and DB Co and the City shall be excluded from all other rights and remedies in respect of any such breach or termination, whether in contract, tort, restitution, statute, at common-law or otherwise.
- (b) Section 4.6(a) of this Schedule 23 shall be without prejudice to any liability, whether arising before, on or after the Termination Date, of either Party to the other, including under the indemnities contained in the Project Agreement that arose with respect to acts or omissions on or prior to the Termination Date (but not from termination itself or the events leading to such termination), to the extent such liability has not already been taken into account in calculating the relevant Compensation Payment under Section 4.5 of this Schedule 23.

(c) DB Co acknowledges that under the provisions of Section 4.5 of the Project Agreement, the City shall pay the Compensation Payment to DB Co and DB Co has irrevocably directed the City to make the Compensation Payment to the Lenders' Agent or as the Lenders' Agent may direct, as security for the Financing. The City acknowledges such direction and agrees to pay the Compensation Payment to the Lenders' Agent or as the Lenders' Agent may direct in accordance with such direction. DB Co acknowledges and agrees that payment by the City of the Compensation Payment in accordance with any such direction constitutes payment by the City to DB Co in satisfaction of the City's obligation to make:

- (i) the Compensation Payment under the Project Agreement; and
- (ii) any payment to DB Co under the Project Agreement, to the extent made in relation to the Guaranteed Price,

as the case may be, and in satisfaction of any trust obligation of the City in respect of such payments under Section 7 of the *Construction Act* (Ontario) pursuant to Section 10 of the *Construction Act* (Ontario).

SCHEDULE 24

INTELLECTUAL PROPERTY

1. INTERPRETATION

1.1 Definitions: In this Schedule 24 – Intellectual Property, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 24 – Intellectual Property) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Assigned Intellectual Property**” has the meaning given in Section 2.5(a).
- (b) “**Assignee**” has the meaning given in Section 2.5(a).
- (c) “**Assignor**” has the meaning given in Section 2.5(a).
- (d) “**CBTC Intellectual Property**” means Subcontractor Intellectual Property of the Nominated Signalling Subcontractor.
- (e) “**City Intellectual Property**” means:
 - (i) Intellectual Property that is Owned, created, developed or acquired by City or any City Personnel:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not DB Co Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property;
 - (ii) the Developed Intellectual Property, excluding any Developed Intellectual Property that is specified in a Variation or by separate agreement of City and DB Co to be Owned by DB Co;
 - (iii) any other Project Data that is specified in a Variation or by separate agreement of City and DB Co to be Owned by City; and
 - (iv) subject to Section 41.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of DB Co, City or any Subcontractor alone, jointly with each other or with any other person;

and which is used by City, or required to be used by DB Co or a Subcontractor, in the performance of their respective obligations in respect of the Project or under the Project Agreement.

- (f) “**City Personnel**” means persons acting on behalf of City or employed, engaged or retained by City in connection with the performance of City’s obligations in connection with the Project, including City’s consultants, contractors and subcontractors and the employees, officers,

directors, volunteers and agents of City and its direct and indirect consultants, contractors and subcontractors, excluding DB Co and any Subcontractor and their respective Personnel.

- (g) **“City Supplied Third Party Intellectual Property”** means Intellectual Property, Owned by a person other than City, DB Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by City to DB Co under the Project Agreement for the purpose of performing the Works and the Project, including any Background Information.
- (h) **“City Trade-Marks”** means the Trade-Marks Owned by City.
- (i) **“Copyleft Licence”** means any licence that requires, as a condition of use, modification and/or distribution of Copyleft Materials, that such Copyleft Materials, or other software or content incorporated into, derived from, used, or distributed with such Copyleft Materials: (i) in the case of software, be made available or distributed in a form other than binary (for example, source code form), (ii) be licenced for the purpose of preparing derivative works, (iii) be licenced under terms that allow the products or portions thereof or interfaces therefor to be reverse engineered, reverse assembled or disassembled (other than by operation of law), or (iv) be redistributable at no licence fee. Copyleft licences include the GNU General Public Licence, the GNU Lesser General Public Licence, the Mozilla Public Licence, the Common Development and Distribution Licence, the Eclipse Public Licence, and all Creative Commons “sharealike” licences.
- (j) **“Copyleft Materials”** means any software or content subject to a Copyleft Licence.
- (k) **“DB Co Embedded Software”** means computer software that is Owned by DB Co and that:
 - (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licenced separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (l) **“DB Co Intellectual Property”** means:
 - (i) Intellectual Property that is Owned, created, developed or acquired by DB Co or any DB Co Personnel:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not City Intellectual Property, City Supplied Third Party Intellectual Property, Subcontractor Intellectual Property, or Third Party Intellectual Property;
 - (ii) the DB Co Licenced Software;
 - (iii) the DB Co Embedded Software;
 - (iv) DB Co’s Technical Information;

- (v) the Project Intellectual Property;
 - (vi) the Project Data, excluding any other Project Data that are specified in a Variation or by separate agreement of City and DB Co to be Owned by City;
 - (vii) any Developed Intellectual Property that is specified in a Variation or by separate agreement of City and DB Co to be Owned by DB Co; and
 - (viii) Subject to Section 41.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of DB Co, City, City Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (m) **“DB Co Licenced Software”** means any computer software that is Owned by DB Co, is not DB Co Embedded Software and is delivered, supplied or otherwise provided by DB Co under the Project Agreement as or as part of any Deliverable.
- (n) **“DB Co Personnel”** means persons acting on behalf of DB Co or employed, engaged or retained by DB Co in connection with the performance of DB Co’s obligations under the Project Agreement, including DB Co’s consultants, contractors and Subcontractors and the employees, officers, directors, volunteers and agents of DB Co and its direct and indirect consultants, contractors and Subcontractors.
- (o) **“Deliverable”** means any item required to be supplied or delivered by DB Co to City within the Project Scope, including Equipment, Project Software, Project Data and all other deliverable requirements specified in Schedule 10 – Review Procedure.
- (p) **“Delivered”** means, with respect to any Intellectual Property, that such Intellectual Property is:
- (i) a Deliverable;
 - (ii) incorporated, embedded or otherwise included in any Deliverable, the Works or any part of the work delivered as part of the Works;
 - (iii) necessary for the undertaking, completion and performance of the Works or any Equivalent Activity; or
 - (iv) necessary for the Use by City or a subsequent Licensee of any Deliverable, the Works, or any part of the work delivered as part of the Works or any Intellectual Property in accordance with the rights granted to City hereunder;
- or that the Use of such Intellectual Property for any of the purposes set out in clause (iii) or (iv) above would infringe the Intellectual Property rights of any person.
- (q) **“Developed Intellectual Property”** means Intellectual Property that is:
- (i) created or developed, or Ownership of which is acquired, by DB Co, any Subcontractor or any DB Co Personnel, or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope;

- (ii) created, developed or Ownership of which is acquired for the purposes of the Project, the Works; and
 - (iii) created or designed based on functional, design and performance specifications provided by City, or City Personnel, or City Parties;
- and, for greater certainty, Developed Intellectual Property does not include any DB Co Intellectual Property used to develop or create the Developed Intellectual Property.
- (r) **“Embedded Software”** means the DB Co Embedded Software, Subcontractor Embedded Software and Third Party Embedded Software.
 - (s) **“Equipment”** means all electrical and mechanical equipment, machinery, computer hardware and systems comprising or used in the Works.
 - (t) **“Equivalent Activity”** means any activity, undertaking or operation relating to the Works done by City, any permitted assignee of City pursuant to Section 49.2 of the Project Agreement and/or any other person acting on behalf of or under the authority of City, which activity, undertaking or operation if done by DB Co would be within the Project Scope, including the Works.
 - (u) **“Escrow Agent”** means a recognized provider of escrow services selected by DB Co and approved by City and having a location within the Province of Ontario with whom the Escrow Materials will be deposited in accordance with Section 3.11.
 - (v) **“Escrow Agreement”** means an escrow agreement that meets the requirements of Section 3.11 and pursuant to which Escrow Materials are held by the Escrow Agent and City are designated as a beneficiary party.
 - (w) **“Escrow Materials”** means:
 - (i) with respect to Software, the Source Materials for that Software; and
 - (ii) with respect to Embedded Software, the Source Materials for that Embedded Software.
 - (x) **“Escrow Provider”** means:
 - (i) DB Co in respect of the DB Co Licenced Software;
 - (ii) the applicable Subcontractor in respect of any Subcontractor Licenced Software;
 - (iii) the applicable third party licensor in respect of any Third Party Licenced Software;
 - (iv) DB Co in respect of the DB Co Embedded Software;
 - (v) the applicable Subcontractor in respect of any Subcontractor Embedded Software; and
 - (vi) the applicable third party licensor in respect of any Third Party Embedded Software.
 - (y) **“Expanded Purposes”** means (i) the Permitted Purposes; and (ii) for any other purpose of the City.

- (z) **“Licence”** means a non-exclusive licence or sub-licence, as applicable, granting the rights and subject to the restrictions and limitations set out in this Schedule 24.
- (aa) **“Licenced Intellectual Property”** means, with respect to any Licence, the Intellectual Property that is within the scope of that Licence as provided for in this Schedule 24.
- (bb) **“Licensee”** means, in respect of any Licence granted or required to be granted by DB Co pursuant to this Schedule 24, City or any permitted assignee under Section 49.2 of the Project Agreement that is the holder of that Licence at the relevant time.
- (cc) **“Licensor”** means DB Co in respect of the DB Co Licenced Software, the applicable Subcontractor in respect of any Subcontractor Licenced Software, or the applicable third party licensor in respect of any Third Party Licenced Software.
- (dd) **“Limited Modification Rights”** in respect of a Software or an Embedded Software, means the right to configure, customize or modify such Software or Embedded Software, without access to the Source Materials thereto, in order to have complete and unrestricted access to, or otherwise Use, all the functionalities within such Software or Embedded Software that is licenced to City under this Schedule 24.
- (ee) **“Modification”** means all corrections, modifications, changes, enhancements, improvements, supplements, customizations or derivative works, and includes the Limited Modification Rights, and **“Modify”** means to make a Modification.
- (ff) **“Open Source Licence”** means any licence meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar licence, including any licence approved by the Open Source Initiative, or any Creative Commons Licence. For the avoidance of doubt, Open Source Licences include Copyleft Licences.
- (gg) **“Open Source Materials”** means any software or content subject to an Open Source Licence.
- (hh) **“Ownership”** means, in respect of any Intellectual Property, ownership of all right, title and interest in and to that Intellectual Property and **“Own”**, **“Owned”** and **“Owner”** shall have corresponding meanings.
- (ii) **“Permitted Purposes”** means:
 - (i) during the Project Term, performance of City’s obligations and the exercise of City’s rights under the Project Agreement and any other agreements relating to the Project;
 - (ii) during the Project Term, City’s participation in the Works and any activity, undertaking or operation within the Project Scope, including its participation in the design and construction, operation, maintenance, repair, correction and renovation of the Works;
 - (iii) both during and after the Project Term, ongoing maintenance and lifecycle works related to the Works and the System Infrastructure, and any Equivalent Activity;
 - (iv) both during and after the Project Term, the use, integration and interoperation of the Works with:

- (A) any existing or other transit projects undertaken by or on behalf of City or interfacing with City projects, including any System Extension; and
 - (B) any existing or after-acquired systems, software, technology or equipment related to the use, operation, maintenance, repair, correction, and renovation of the Works and any System Extension;
- (v) both during and after the Project Term, and so long as the Licensee is City or other Governmental Authority:
 - (A) the provision of governmental services and the conduct of operations and activities provided in connection or otherwise associated with the Works and any System Extension and the Lands by City or any Governmental Authority or any emergency service provider; and
 - (B) the development of transportation standards, policies and procedures.
- (jj) **“Personnel”** means (i) in reference to DB Co, the DB Co Personnel, (ii) in reference to City, City Personnel, and (iii) in reference to any Subcontractor, such Subcontractor’s Personnel.
- (kk) **“Project Data”** means:
 - (i) all Design Data; and
 - (ii) any other materials, documents and/or data prepared by or on behalf of DB Co or Subcontractors in relation to the Works or the Project Agreement, excluding the Jointly Developed Materials, the Background Information and any Developed Intellectual Property.
- (ll) **“Project Intellectual Property”** means Intellectual Property that is created or developed, or Ownership of which is acquired, by DB Co, any Subcontractor or any DB Co Personnel or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope, and which is created, developed or acquired for the purposes of the Project or the Works, but excluding Project Software, Embedded Software, Project Data, Developed Intellectual Property and Technical Information.
- (mm) **“Project Scope”** means the scope of the Project, including the performance of all Works, as defined by the terms of the Project Agreement.
- (nn) **“Project Software”** or **“Software”** means any DB Co Licenced Software, Subcontractor Licenced Software and Third Party Licenced Software, but does not include Embedded Software.
- (oo) **“Software Maintenance and Support”** means, with respect to any Software, the software maintenance and support services for that Software that are provided separately under a software maintenance and support agreement with the licensor of that Software.
- (pp) **“Software Tools”** means, with respect to any Software or Embedded Software, any routines, compilers, bootstraps, analyzers, monitors, toolkits and other software tools used by the licensor of such Software or Embedded Software in connection with the programming, compiling,

maintenance, debugging, analysis, configuration, customization, verification or monitoring of such Software or Embedded Software.

(qq) **“Source Materials”** means:

- (A) a complete source code version of the Software or Embedded Software, in machine-readable form which, when compiled, will produce the executable version of the Software or Embedded Software and in human-readable form with annotations in the English language or such other language as is acceptable to City, acting reasonably, in both cases on a storage medium suitable for long term archival storage;
- (B) a complete copy, in English or such other language as is acceptable to City, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials, including programmer’s notes, technical or otherwise, for the Software or Embedded Software as may be required for a person other than the licensor of the Software or Embedded Software, using a competent computer programmer possessing ordinary skills and experience, to further develop, maintain and operate the Software or Embedded Software without further recourse to the licensor, which will include, to the extent such items have been or are created for such Software or Embedded Software, general flow charts, input and output layouts, field descriptions, volumes and sort sequence, data dictionary, file layouts, processing requirements and calculation formulae, circuit diagrams and the details of all algorithms and which shall be deemed to include those materials, as revised from time to time; and
- (C) all Software Tools for such Software or Embedded Software, to the extent not previously delivered with the Software or Embedded Software.

(rr) **“Subcontractor Embedded Software”** means computer software that is Owned by a Subcontractor and that:

- (i) is included, embedded or otherwise incorporated in Equipment;
- (ii) is not licenced separately and apart from that Equipment; and
- (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.

(ss) **“Subcontractor Intellectual Property”** means, with respect to each Subcontractor:

- (i) Intellectual Property that is Owned, created, developed or acquired by that Subcontractor:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or

- (C) during the Project Term and within the Project Scope, but which is not City Intellectual Property, City Supplied Third Party Intellectual Property, DB Co Intellectual Property, or Third Party Intellectual Property;
- (ii) the Subcontractor Licenced Software;
- (iii) the Subcontractor Embedded Software;
- (iv) the Subcontractor's Technical Information; and
- (v) subject to Section 41.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of DB Co, City, City Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (tt) **"Subcontractor Licenced Software"** means any computer software that is Owned by a Subcontractor, is not Subcontractor Embedded Software and is delivered, supplied or otherwise provided by the Subcontractor under the Project Agreement, the Subcontract as or as part of any Deliverable.
- (uu) **"Subcontractor Personnel"** means, with respect to any Subcontractor, persons acting on behalf of that Subcontractor or employed, engaged or retained by that Subcontractor in connection with the performance of that Subcontractor's obligations under the Project Agreement or the Subcontract, including the Subcontractor's consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of the Subcontractor and its direct and indirect consultants, contractors and subcontractors.
- (vv) **"System Architecture and Look and Feel"** means any work product, including any Intellectual Property therein, Owned, created, developed, acquired or licenced whether by DB Co or any Subcontractor in respect of any aspect of the architecture or look and feel of the Works, including without limitation all designs, design details, drawings, specifications, prototypes, documentation, works and all instruments of architectural service that relate to the design identity, look and feel of any aspect of the architectural and landscape design whether in respect of the tunnel, landscape and urban design elements, fit and finish, or any other aspect of the Works.
- (ww) **"Technical Information"** means technical information relating to any Equipment supplied or Intellectual Property licenced under the Project Agreement, including software documentation, user and operating manuals, maintenance and repair manuals, parts lists and other materials relevant to the use, operation, maintenance or repair of such Equipment or Intellectual Property.
- (xx) **"Third Party Embedded Software"** means computer software that is not Owned by City, DB Co or a Subcontractor and that:
 - (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licenced separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.

- (yy) **“Third Party Intellectual Property”** means Intellectual Property Owned by a person other than City, DB Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by DB Co or a Subcontractor under the Project Agreement as or as part of any Deliverable, including Third Party Licenced Software and Third Party Embedded Software.
- (zz) **“Third Party Licenced Software”** means any computer software that is not Owned by City, DB Co or a Subcontractor, is not Third Party Embedded Software and is delivered, supplied or otherwise provided by DB Co or a Subcontractor under the Project Agreement as or as part of any Deliverable.
- (aaa) **“Trade-Mark Licence Agreement”** means the trademark licence agreement entered into between DB Co and City providing for the licence by City of City Trade-Marks to DB Co, being substantially in the form of Appendix A attached to this Schedule 24.
- (bbb) **“Trust Rights”** has the meaning given in Section 2.5(b).
- (ccc) **“Use”** means, with respect to any Intellectual Property, to do any and all things with that Intellectual Property that the Owner of that Intellectual Property could do, including to load, transmit, access, execute, use, store, display, copy, adapt, translate, incorporate into other materials, practice, make and have made, but specifically excluding the right to Modify and subject to any limitations in the provision of this Schedule 24 pursuant to which a Licence is granted.

2. OWNERSHIP

2.1 DB Co Intellectual Property: DB Co shall be and remain the sole and exclusive Owner of the DB Co Intellectual Property. For certainty, nothing in this Schedule 24 shall transfer to DB Co any Ownership of, or grant to DB Co any right in respect of, City Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any DB Co Intellectual Property, except for the Licence granted under Section 3.1.

2.2 City Intellectual Property: City shall be and remain the sole and exclusive Owner of City Intellectual Property. For certainty, nothing in this Schedule 24 shall transfer to City any Ownership of, or grant to City any right in respect of, the DB Co Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any City Intellectual Property, except for the Licence granted under Section 3.2.

For greater clarity and without limiting City’s Ownership rights, DB Co acknowledges and agrees that City shall be entitled to Use and Modify the Developed Intellectual Property (other than any Developed Intellectual Property that is specified in a Variation or by separate agreement of City and DB Co to be Owned by DB Co) in any manner and for any purpose whatsoever, including without limitation in connection with the Expanded Purposes.

2.3 Subcontractor Intellectual Property: As between City and DB Co, but subject to any agreement to the contrary between DB Co and any Subcontractor, each Subcontractor shall be and remain the sole and exclusive Owner of its Subcontractor Intellectual Property.

2.4 City Supplied Third Party Intellectual Property: As between City and DB Co, but subject to any agreement to the contrary between City and the Owner of any City Supplied Third Party Intellectual Property, the Owner of any City Supplied Third Party Intellectual Property shall be

and remain the sole and exclusive Owner of any City Supplied Third Party Intellectual Property. For certainty, nothing in this Schedule 24 shall transfer to DB Co or any Subcontractor any Ownership of, or grant to DB Co or any Subcontractor any right in respect of, City Supplied Third Party Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any DB Co Intellectual Property or any City Intellectual Property or any Subcontractor Intellectual Property, except for the Licence granted under Section 3.1.

2.5 Assignments

- (a) If, notwithstanding Section 2.1, 2.2, 2.3, or 2.4 or Section 41.4 of the Project Agreement, either party (the “**Assignor**”) retains, acquires or owns any right, title or interest in or to any Intellectual Property that is to be Owned by another person (the “**Assignee**”) pursuant to Section 2.1, 2.2, 2.3, or 2.4 or Section 41.4 of the Project Agreement as applicable, (the “**Assigned Intellectual Property**”), then the Assignor will assign, and for no further consideration and without any further act or formality does hereby irrevocably assign, to the Assignee all of the Assignor’s worldwide right, title and interest in and to the Assigned Intellectual Property free and clear of all liens, claims, charges or encumbrances, but subject to any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 24.
- (b) If and to the extent that the assignment pursuant to Section 2.5(a) is not effective on the date hereof or on any future date, either generally or pursuant to the laws of any jurisdiction, then any and all right, title and interest in and to the Assigned Intellectual Property that is retained, acquired or owned by the Assignor (collectively, the “**Trust Rights**”), will be held by the Assignor in trust for the exclusive benefit and use of the Assignee, except for any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 24, and the Assignor will execute and deliver to the Assignee such transfers, assignments, documents and instruments as may be necessary to transfer and assign to the Assignee the Trust Rights, free and clear of all liens, claims, charges or encumbrances, promptly upon receipt thereof from the Assignee, and will otherwise cooperate with the Assignee to give effect to, record and register the Assignee’s ownership of the Trust Rights.
- (c) DB Co will include in each Subcontract provisions equivalent to Sections 2.5(a) or 2.5(b) with respect to: (i) City Intellectual Property, Jointly Developed Materials, Developed Intellectual Property, Project Data and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that City remains at all times the sole and exclusive Owner of all such property; and (ii) City Supplied Third Party Intellectual Property and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that the Licensor, as applicable, remains at all times the sole and exclusive Owner of all such property.

2.6 Personnel: City and DB Co shall, and DB Co shall include in each Subcontract an obligation of each Subcontractor to, ensure that their respective Personnel shall:

- (a) by duly executed written agreement or by operation of law, irrevocably and unconditionally sell, assign and transfer to that party all right, title and interest that its Personnel may have in or to any and all Intellectual Property referred to in this Schedule 24 and all Modifications thereto, such that agreements as to Ownership of Intellectual Property pursuant to Sections 2.1, 2.2, 2.3, or 2.4 and Section 41.4 of the Project Agreement and the assignment by that party pursuant to Section 2.5 include all right, title and interest of its Personnel; and

- (b) by duly executed written agreement, irrevocably waive all non-transferable rights, including moral rights, that they have or may have in any Intellectual Property assigned by such Personnel pursuant to Section 2.6(a) in favour of the assignee and its successors, assigns and licensees.

3. LICENCES

3.1 Licence by City to DB Co

- (a) Subject to Section 3.1(d), City hereby grants to DB Co:
 - (i) a royalty free, fully paid-up, limited Licence to Use and Modify City Intellectual Property for the sole purpose of and only to the extent necessary for the performance by DB Co of the Project Scope and its obligations under the Project Agreement;
 - (ii) a limited Licence to Use City Supplied Third Party Intellectual Property for the sole purpose of and only to the extent necessary for the performance by DB Co of the Project Scope and its obligations under the Project Agreement.
- (b) Subject to Section 3.1(d), DB Co may sublicense its rights under the Licence granted in Section 3.1(a) to any Subcontractor for the sole purpose of and only to the extent necessary for the performance by that Subcontractor of its obligations under its Subcontract.
- (c) Except as provided in Section 3.1(b), DB Co may not transfer, assign, sublicense or otherwise dispose of the Licence granted under Section 3.1(a) without the prior written consent of City, which consent may be given or refused by City in its absolute and unfettered discretion.
- (d) The Licence of any City Supplied Third Party Intellectual Property pursuant to Section 3.1(a) shall be subject to the terms and conditions of the licence agreement between City and the licensor of City Supplied Third Party Intellectual Property. The City will provide to DB Co a copy of any such third party licence agreement (which may be redacted as to financial and other terms not relevant to use of City Supplied Third Party Intellectual Property by DB Co and Subcontractors), or where prohibited from doing so by obligations of confidentiality to the third party licensor, a summary of the obligations, limitations and restrictions applicable to use of City Supplied Third Party Intellectual Property by DB Co and Subcontractors. DB Co will comply, and will require any Subcontractor to comply, with the terms and conditions of such third party licence agreement (as set out in the copy of the third party licence agreement or summary thereof provided by City to DB Co) to the extent applicable to DB Co and any Subcontractor in the performance of their respective obligations under the Project Agreement and any Subcontract. If requested by City, DB Co will, and will require any Subcontractor to, execute and deliver to City and the third party licensor an agreement that includes reasonable terms for the protection of the confidentiality of City Supplied Third Party Intellectual Property and an acknowledgement of the third party licensor's ownership thereof, unless DB Co disputes such ownership.
- (e) The Licence granted to DB Co under: Section 3.1(a)(i), and any sublicense granted by DB Co to a Subcontractor thereunder, will terminate upon the expiry or termination of DB Co's services and other obligations under the Project Agreement; Section 3.1(a)(ii) and any sublicense granted by DB Co to a Subcontractor thereunder, will terminate upon the earlier of: (A) expiry or termination of DB Co's services and other obligations under the Project Agreement; and (B) the termination of the contract in respect of the applicable City Supplied Third Party Intellectual Property or City's licence or sublicense rights thereunder.

- (f) The Licences granted to DB Co under Section 3 do not include licences to any City Trade-Marks. The use of any City Trade-Marks shall be governed by the terms of the Trade-Mark Licence Agreement.

3.2 Licence by DB Co to City

- (a) DB Co hereby grants to City a Licence to:
- (i) Use and Modify the DB Co Intellectual Property (excluding DB Co Licenced Software and DB Co Embedded Software) that is Delivered and the Subcontractor Intellectual Property (excluding the Subcontractor Licenced Software, the Subcontractor Embedded Software and excluding the right to Modify the CBTC Intellectual Property) that is Delivered;
 - (ii) Use, and have Limited Modification Rights to, the DB Co Licenced Software that is Delivered and the Subcontractor Licenced Software (excluding, for Limited Modification Rights, the Subcontractor Licenced Software comprising CBTC Intellectual Property) that is Delivered and only in respect of the modules that are Delivered; and
 - (iii) Use, and have Limited Modification Rights to, the DB Co Embedded Software and the Subcontractor Embedded Software (excluding, for Limited Modification Rights, the Subcontractor Embedded Software comprising CBTC Intellectual Property) as part of and for the Use of the Equipment in which such software is included, embedded or otherwise incorporated;

for the Permitted Purposes. Subject to Section 3.11, the Licences granted pursuant to this Section 3.2 in respect of Project Software and Embedded Software apply to only object code versions thereof and not the source code materials for any such Project Software or Embedded Software.

In addition and notwithstanding any other provision of this Schedule 24, DB Co hereby grants to City a Licence to Use and Modify any System Architecture and Look and Feel that is not owned by City pursuant to this Schedule 24, for the Expanded Purposes.

- (b) The Licence granted pursuant to this Section 3.2 will be irrevocable (except as provided in Section 3.2(d)), perpetual, royalty free, fully paid-up (upon payment of the fees specified in the Project Agreement for the Deliverable which consists of or incorporates the Licenced Intellectual Property in respect of which the Licence is granted), and permit Use by City on an enterprise basis without restriction or limitation as to users (whether by number, identity or otherwise), location, capacity, authorized system or otherwise, as part of or in connection with the Works, or in the case of the System Architecture and Look and Feel, in connection with the Expanded Purposes.
- (c) The Licence granted pursuant to this Section 3.2 may be transferred, assigned, sublicenced and otherwise disposed of by City subject to and in accordance with Section 49.2 of the Project Agreement, provided that the Licence in respect of DB Co Embedded Software and Subcontractor Embedded Software may only be transferred together with the Equipment in which such software is included, embedded or otherwise incorporated.
- (d) The Licence granted pursuant to this Section 3.2 may not be terminated except in the event of the failure of the Licensee to pay the applicable fees as provided for in the Project Agreement for the

specific Deliverable which consists of or incorporates the Licenced Intellectual Property, and such failure is not remedied by the Licensee within 60 days after notice by DB Co to the Licensee demanding that such failure be remedied, provided that any such termination shall apply only to the Licenced Intellectual Property to which such failure applied and not to any other Licenced Intellectual Property. Except as specifically provided in this Section 3.2(d), DB Co shall not be entitled to terminate or rescind the Licence granted under this Section 3.2, and if the Licensee commits any other breach of or default under this Schedule 24 or the Project Agreement, whether material or not and whether that breach or default is or is not capable of being remedied, DB Co's rights and remedies in respect of that breach or default shall be limited to such rights and remedies other than termination or rescission of the Licence granted under this Section 3.2 as may exist at law or in equity, it being acknowledged by DB Co that except as provided in this Section 3.2(d) the Licence granted under this Section 3.2 is perpetual and irrevocable. No breach of or default under this Schedule 24 by City shall constitute a repudiation of the Licence granted under this Section 3.2 by City.

- (e) The Licensee may provide and disclose the Licenced Intellectual Property to any employee, contractor, subcontractor, consultant, service provider, outsourcer or other person retained by the Licensee (including the Operator) in connection with the Permitted Purposes, except in respect of the System Architecture and Look and Feel in connection with the Expanded Purposes, and any such employee, contractor, subcontractor, service provider, outsourcer or other person may exercise all rights to Use and Modify the Licenced Intellectual Property as may be granted by the Licensee to such person within the scope of the Licence granted by DB Co to the Licensee pursuant to this Schedule 24, provided that the Licensee shall be responsible for anything done or failed to be done by any employee, contractor, subcontractor, service provider, outsourcer or other person to whom the Licensee provides and discloses the Licenced Intellectual Property, including a breach by any such person of City's obligations of confidentiality in respect of any Confidential Information that is or is part of Licenced Intellectual Property.
- (f) The Licensee may Use Project Software that is licenced pursuant to this Section 3.2 in multiple environments or instances, including for training, development, testing, staging, and disaster recovery and in a live, production or operating environment.
- (g) The Licensee may make copies of the Licenced Intellectual Property as may be reasonably necessary for Use and Modification of the Licenced Intellectual Property in accordance with the Licence granted pursuant to this Section 3.2 or otherwise this Schedule 24. All such copies shall be Owned by Owner of the original Licenced Intellectual Property and licenced to the Licensee pursuant to this Section 3.2. Except as permitted by this Schedule 24, the Licensee will not copy, Modify, disassemble, reverse engineer, decompile, translate or otherwise obtain or create the source code for any DB Co Intellectual Property, DB Co Licenced Software, DB Co Embedded Software, Subcontractor Intellectual Property, Subcontractor Licenced Software or Subcontractor Embedded Software.
- (h) The Licensee will not remove from any Licenced Intellectual Property any markings or notices with respect to the ownership thereof, Copyright therein or the confidentiality thereof.
- (i) Where City has the right to Modify any Licenced Intellectual Property, DB Co shall ensure that all authors of such Licenced Intellectual Property have waived all moral rights that such authors may have therein in favour of City and its successors, assigns and licensees.

3.3 Licences with Subcontractors

- (a) DB Co will be responsible to obtain from each Subcontractor the right to grant the Licence under Section 3.2 in respect of the Subcontractor Intellectual Property.
- (b) DB Co will be responsible to obtain from each Subcontractor the right to Use and Modify Subcontractor Intellectual Property (excluding the right to Modify the CBTC Intellectual Property) to the extent necessary for DB Co to perform its obligations under the Project Agreement, on such terms as are not in breach of or conflict with the Project Agreement.
- (c) DB Co will be responsible to grant to each Subcontractor the right to Use and Modify City Intellectual Property and DB Co Intellectual Property to the extent necessary for each Subcontractor to perform its obligations under its Subcontract, on such terms as are not in breach of or conflict with the Project Agreement.

3.4 Third Party Intellectual Property: DB Co will not, and will not permit any DB Co Personnel, Subcontractor or Subcontractor Personnel to, incorporate, embed or otherwise include in the Works or any Deliverable any Third Party Intellectual Property unless:

- (a) for Third Party Intellectual Property other than Third Party Embedded Software, such Third Party Intellectual Property is provided by the Owner thereof pursuant to a licence agreement that:
 - (i) grants to the Licensee rights equivalent to or better than the rights granted under the Licence in Section 3.2, including being assignable in accordance with Section 3.2(c), and, where the Third Party Intellectual Property is software or includes software, provides for the maintenance and support of that software on terms acceptable to City; or
 - (ii) has been approved by City in writing, which approval may be given or refused by City in its absolute and unfettered discretion;

and such licence agreement, if not entered into with City directly, has been assigned or is freely assignable to City;

- (b) for Third Party Embedded Software, either (i) such Third Party Embedded Software is embedded in Equipment and is not provided by the Owner thereof pursuant to a licence agreement, but may be used by City or any subsequent owner of the machine or equipment as part of and for the intended purposes of such machine or equipment upon the purchase thereof, or (ii) such Third Party Embedded Software is subject to a licence agreement that complies with Section 3.4(a).
- (c) If DB Co, DB Co Personnel, Subcontractor or Subcontractor Personnel incorporates, embeds or includes any Third Party Intellectual Property in the Works or any Deliverable other than in compliance with this Section 3.4, then in addition to any other rights and remedies City may have against DB Co, DB Co will at its sole cost and expense take all necessary steps to comply with this Section 3.4 or, if DB Co is unable to do so, to remove such Third Party Intellectual Property and replace it with DB Co Intellectual Property that provides the same functionality and performance as such Third Party Intellectual Property and which will operate within the Works without any degradation thereof or adverse effect thereon, and which will be included in the DB Co Intellectual Property for the purposes of the Licence granted pursuant to Section 3.2.

- 3.5 **Non-Assertion:** DB Co agrees not to assert, and to cause its Subcontractors not to assert, any Intellectual Property right against City or any Licensee that would have the effect of diminishing the rights granted to City or any Licensee hereunder. Without limiting the generality of the foregoing, DB Co will not sue, and will cause its Subcontractors not to sue, City or any Licensee on the basis that any Equivalent Activity or the Ownership or Use of the Works or any Deliverable within the scope of the Permitted Purposes infringes any Intellectual Property right of DB Co or any Subcontractor.
- 3.6 **Deliveries:** DB Co will deliver to City all Licenced Intellectual Property at the times specified in the Project Agreement, or where no time is specified, on or before the Final Completion Date or the Termination Date, whichever is first to occur. The media on which Project Software is delivered and tangible copies or embodiments of any Licenced Intellectual Property other than Project Software and will be the property of City, notwithstanding DB Co's, a Subcontractor's or a third party's Ownership of the Licenced Intellectual Property. If any Licenced Intellectual Property requires software in order to Use that Licenced Intellectual Property, DB Co will ensure that such software will be commercially available to City at a reasonable licence fee, or if such software is not commercially available, DB Co will at its cost provide such software and a licence therefor to City and City Parties, RTG and RTG Parties, on terms and conditions that do not result in any impairment of City's Use of the Licenced Intellectual Property in accordance with the Licence therefor.
- 3.7 **Pass Through Obligations:** DB Co is responsible to include in all contracts with DB Co Personnel and in all Subcontracts with Subcontractors such terms and conditions as may be necessary for DB Co to grant, or obtain for City, the Ownership, Licences, rights and benefits provided for in this Schedule 24.
- 3.8 **Conflicting Software Licences:** All software referenced in this Schedule 24 will be licenced in accordance with this Schedule 24, and any form of software licence agreement used or provided by a licensor in association with any such software will be of no force or effect and will not be binding on City or any other Licensee, even if by its terms such software licence agreement is stated to be accepted by the installation or use of the software, and regardless of any acceptance of such software licence agreement that is required in order to install or use the software.
- 3.9 **Trade-Marks and Names:** Except as expressly set forth: (a) in the Trade-Mark Licence Agreement; (b) the Project Agreement; or (c) otherwise in a writing executed by each of City and DB Co, neither Party shall use any Trade-Marks owned by the other Party, or use the names or any identifying logos or otherwise of the other Party in any advertising or permit them so to be used.
- 3.10 **Open Source.** DB Co shall not, and shall cause the Subcontractor not to, incorporate, embed or include any Open Source Materials in any Deliverables, City Intellectual Property, City Supplied Third Party Intellectual Property without the prior written consent of City.
- 3.11 **Escrow Agreements**
- (a) If requested by City (which for the purposes of this Section 3.11 includes any permitted assignee under Section 49.2 of the Project Agreement), at any time during the Project Term, DB Co will, or will require the applicable Subcontractor or third party licensor to, enter into an Escrow Agreement for any Software or Embedded Software (an "**Escrowed Deliverable**") on terms that comply with this Section 3.11, or amend its existing Escrow Agreement for such Software or

Embedded Software to comply with this Section 3.11, and add City as a beneficiary under the Escrow Agreement.

- (b) The Escrow Provider will deposit with the Escrow Agent the Escrow Materials for the Escrowed Deliverable and all Modifications thereto provided by the Escrow Provider to City as part of the Works, Software Maintenance and Support (if purchased by or on behalf of City) or any other services performed by the Escrow Provider for City, and in the case of Software or the Embedded Software, the Escrow Provider will update the Escrow Materials to conform to the then-current version of the Software in use by City including all Modification thereto made for the benefit of City.
- (c) City will have the right, on reasonable notice to the Escrow Provider and the Escrow Agent, to verify that the Escrow Materials conform to the Escrowed Deliverable supplied to and in use by City to which the Escrow Materials relate. In addition, City may purchase such additional verification services as may be offered by the Escrow Agent and the Escrow Provider will cooperate with City and the Escrow Agent in the performance of those verification services.
- (d) City will have the right to obtain from the Escrow Agent a copy of the Escrow Materials upon any of the following events:
 - (i) the Escrow Provider is bankrupt;
 - (ii) a trustee, receiver, manager, receiver-manager, custodian or person having similar authority is appointed for the Escrow Provider or its business and assets and is not released or removed within 30 days after the appointment;
 - (iii) the Escrow Provider seeks protection from its creditors or undertakes any reorganization for the purpose of obtaining relief from its creditors;
 - (iv) the Escrow Provider ceases to carry on business; or
 - (v) in the case of Software, if City is purchasing Software Maintenance and Support for the Software in respect of which the Escrow Materials have been deposited, if the Escrow Provider has given City or any of its representatives notice that it will no longer provide Software Maintenance and Support or if the Escrow Provider defaults in the performance of Software Maintenance and Support and does not remedy that default within 30 days after receipt of notice from City demanding that the Escrow Provider do so.
- (e) DB Co shall ensure that the Escrow Agreement: (i) requires the Escrow Agent to release the Escrow Materials to City if any of the events listed in Section 3.11(d) occur; (ii) does not contain any provision placing any obligation on City, including without limitation, any indemnity obligation; and (iii) complies with and does not contradict any provision of this Section 3.11. Where this Section 3.11 places an obligation on the Escrow Agent, DB Co shall cause the Escrow Agent to comply with all such obligations.
- (f) DB Co hereby grants, and DB Co shall ensure that all Escrow Providers grant to City as of the date the applicable Software or the applicable Embedded Software is used in connection with the Project Scope, a Licence to:

- (i) Use the Escrow Materials to enable City to Use the Escrowed Deliverable to which the Escrow Materials relate for the Permitted Purposes, and where the Escrowed Deliverable is or contains Licenced Intellectual Property in accordance with the Licence applicable thereto;
 - (ii) make Modifications to the Escrow Materials notwithstanding any contradictory term or condition in the Licence applicable to the Escrowed Materials which Modifications are only used for the Permitted Purposes or the Expanded Purposes, as applicable, and are subject to confidentiality obligations under Section 3.11(f)(v);
 - (iii) recompile versions of the Software or Embedded Software from the Escrow Materials, which recompiled versions shall be deemed to form part of the Software or Embedded Software and be subject to the terms hereof;
 - (iv) make only those copies of the Escrow Materials that City reasonably requires for the purposes set out in Sections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii); and
 - (v) disclose the Escrow Materials, or any part thereof, only to agents, employees or contractors of City as reasonably required for the purposes set out in Sections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii), provided that such agents, employees and contractors are bound by obligations of confidentiality in respect of any Escrow Materials disclosed to them, the breach of which shall constitute a breach by City of its obligations of confidentiality in respect of the Escrow Materials.
- (g) The Licence granted pursuant to Section 3.11(f) will:
- (i) where the Escrow Provider is DB Co or a Subcontractor, form part of the Licence granted pursuant to Section 3.2; or
 - (ii) where the Escrow Provider is a third party, form part of the licence granted by such third party to City;
- and in either case remain in effect for so long as such licence remains in effect.
- (h) Except where City (i) terminates the Escrow Agreement, (ii) has a renewal right and fails to renew the Escrow Agreement, or (iii) fails to make payments as set out in Section 3.11(i), the Escrow Provider will not terminate or fail to renew the Escrow Agreement without entering into a new Escrow Agreement with a replacement escrow agent on terms and conditions substantially the same as the Escrow Agreement and this Section 3.11.
- (i) The City will pay all fees charged by the Escrow Agent in association with the deposit and maintenance of the Escrow Materials by the Escrow Agent under the Escrow Agreement for the benefit of City. The Escrow Provider shall have no responsibility or liability arising from any failure of City to pay fees when due in order to maintain the Escrow Materials with the Escrow Agent.
- (j) If City receives the Escrow Materials, then as between City and DB Co and notwithstanding any other provision of the Project Agreement, City will own all Modifications to the Escrow Materials made by or for City and all Intellectual Property in such Modifications.

3.12 Modifications: Notwithstanding the granting of any licence pursuant to this Schedule 24, where City has made any Modification to the DB Co Intellectual Property or the Subcontractor Intellectual Property other than (a) a Modification made by or on behalf of DB Co or a Subcontractor or otherwise authorized by DB Co or any Subcontractor, or (b) a Modification made through the Limited Modification Rights,

then,

- (i) any warranty provided by DB Co under the Project Agreement shall not apply solely in respect of such Modification;
- (ii) DB Co and the Subcontractors shall not be liable in respect of any Direct Losses arising in connection with such Modifications where such Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications; and
- (iii) the indemnity obligations of DB Co set out in Section 46.1(f) of the Project Agreement shall not apply in respect of any such Modifications where the Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications.

Appendix A

Form of Trade-Mark Licence Agreement

TRADE-MARK

LICENCE

AGREEMENT

THIS TRADE-MARK LICENCE AGREEMENT, effective as of **[DATE]** (the “**Agreement**”), is between City (the “**Licensor**”), and **[•]** (the “**Licensee**”), and Licensor and Licensee are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

1. Licensor and Licensee are parties to a Project Agreement dated **[DATE]** (the “**Project Agreement**”);
2. Capitalized terms used but not defined herein have the meanings assigned to them in the Project Agreement and this Schedule 24 thereto;
3. Licensor owns the trade-marks shown on Exhibit A (the “**Marks**”);
4. Licensee proposes to use the Marks in **[Ontario]** (the “**Territory**”) for the Limited Purpose set forth below; and
5. Subject to the terms and conditions set forth herein, Licensor is willing to grant to Licensee, and Licensee is willing to accept, a non-exclusive licence to use the Marks pursuant to the terms of this Agreement.

NOW THEREFORE in consideration of the covenants contained herein, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Grant:** Licensor grants to Licensee, and Licensee accepts, a limited, non-transferable, non-exclusive, royalty-free right and licence to use the Marks in the Territory for the sole purpose of and only to the extent necessary for the performance by Licensee of the Project Scope and its obligations under the Project Agreement (the “**Limited Purpose**”).
2. **No Right to Sublicence:** Licensee acknowledges and agrees that it does not have the right to sublicense the use of the Marks to any party without the express written consent of Licensor.
3. **Ownership:** Licensee acknowledges Licensor’s ownership of the Marks, and agrees that its use of the Marks shall enure to Licensor’s benefit.
4. **Licensee Covenants:** Licensee acknowledges that Licensor is the owner of all rights in the Marks, and, except as otherwise expressly permitted by this Agreement, Licensee shall not at any time do or suffer to be done any act or thing that will in any way impair the rights of Licensor in and to the Marks. Nothing in this Agreement grants, nor shall Licensee acquire, any right, title or interest in or to the Marks or any goodwill associated with the Marks, other than those rights expressly granted hereunder. Licensee shall affix to all materials that contain or bear one or more

of the Marks such legends and notices as Licensor may reasonably require. At Licensor's request, Licensee shall publish a public notice in the following form, or in any other form prescribed by Licensor from time to time, in appropriate publications addressed to the general public: "[MARK] is a trade-mark owned by [LICENSOR] used under licence by [LICENSEE]". Licensee undertakes to comply with all relevant laws and regulations pertaining to trade-marks and marking requirements. Licensee shall execute all documents and provide all assistance reasonably required by Licensor to apply for, obtain and maintain registrations for the Marks, and to enforce rights in, and defend any proceedings brought against applications or registrations for, the Marks.

5. **Restrictions On Use:** Notwithstanding anything contained in this Agreement or otherwise, Licensee shall use the Marks only in accordance with the design, description and/or appearance of the Marks as shown on Exhibit A. Licensee may not change or modify the Marks nor join the mark with any other words or designs. Licensee agrees to abide by any reasonable guidelines provided by Licensor from time to time in connection with the use of the Marks.
6. **Quality Standards and Control:** Licensee agrees that use of the Marks by Licensee in association with any products or services (the "**Products**" and "**Services**") will meet or surpass the standards set by Licensor and conveyed to Licensee from time to time for the character and quality of such Products and Services.
7. **Inspection:** At the request of the Licensor, the Licensee shall provide to Licensor for Licensor's review, comment and approval samples of the any Products and sample copies of materials associated with the Products or Services or used to advertise/promote the Products or Services.
8. **Breach of Licence:** Licensor may notify the Licensee if it objects to any proposed or actual use of the Marks if in Licensor's sole judgment (acting reasonably) Licensor believes that the Marks is being used or proposed to be used in a manner that erodes the goodwill associated with the Marks or otherwise reduces the value of the Marks. If Licensee is so notified, the Parties shall attempt to settle any dispute and Licensee shall, if directed by Licensor to do so, cease using or cease from using the Marks until the time such dispute has been settled between the Parties or otherwise finally determined.
9. **Infringement:** Licensee shall promptly notify Licensor upon becoming aware of any infringement or dilution of the Marks and shall cooperate fully with Licensor to stop such infringement or dilution. Licensor, in its sole discretion, will take any action that it deems necessary to protect the validity of the Marks, and Licensee hereby waives any rights that it may have pursuant to Section 50(3) of the *Trade-marks Act*.
10. **Indemnification:** Licensor does not assume any liability to Licensee, or third parties, for Licensee's goods or services, including the Products and Services, and Licensee shall defend, indemnify and hold harmless Licensor and its affiliates, successors and assigns, and their respective officers, directors, employees, agents, lawyers and representatives from and against any and all claims, causes of action, suits, damages, losses, liabilities, costs and expenses (including, but not limited to, reasonable lawyer fees and expenses), which may be sustained or suffered as a result of any such third party claims or arising from a breach of this Agreement by Licensee including, without limitation, any act or omission, which causes or is alleged to cause harm or a violation of any of the rights of any third party.

11. **Breach/Use Outside Limited Purpose:** In the event that Licensee breaches any of the terms of this Agreement, including use of the Marks outside the Limited Purpose or Territory as determined by Licensor in its sole discretion, but acting reasonably, Licensor shall have the option to terminate this Agreement immediately, and if so terminated, all subsequent use by Licensee will be unauthorized and subject to legal action. Upon the termination of this Agreement for any reason, all rights in the Marks granted to Licensee hereunder shall automatically revert to Licensor, Licensee shall have no further rights in the Marks, and Licensee shall immediately change its use of the Marks to uses that do not consist of or include the Marks or any words similar to the Marks. In the event of an unauthorized use of the Marks by Licensee, Licensee consents to the immediate entry of a court injunction preventing Licensee's further use of the Marks.
12. **Termination:** This licence granted to Licensee will terminate upon the expiry or termination of Licensee's services and other obligations under the Project Agreement.
13. **No Agency:** The Parties hereto are independent contractors with respect to each other, and nothing herein shall create any association, partnership, joint venture or agency relationship between them.
14. **Assignment:** Licensee may not convey, sublicense, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of this Agreement without the prior written consent of Licensor, which consent may be unreasonably withheld.
15. **Headings:** The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.
16. **Notices:** All notices, requests, demands and other communications made in connection with this Agreement shall be made in the manner set out in the Project Agreement.
17. **Entire Agreement:** This Agreement constitutes the entire agreement between Licensor and Licensee with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral, written, express or implied, between Licensor and Licensee.
18. **No Waiver:**
 - (a) No waiver made or given by a Party under or in connection with this 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 Party. 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 either 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.
19. **Successors:** This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

20. **Severability:** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this 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 Agreement. If any such provision of this 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 Agreement as near as possible to its original intent and effect.
21. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province 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. Each of the Parties attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
22. **Counterparts:** The Project 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 the other Party an original signed copy of the Project Agreement which was so faxed.

[Remainder of page intentionally blank – Next page is the signature page.]

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the date set forth above.

THE CITY OF OTTAWA

Per:

Name:

Title:

I/We have authority to bind the corporation.

[LICENSOR]

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation.

EXHIBIT A

Trade-marks

[Note to Proponents: To be completed once trade-marks identified.]

SCHEDULE 25

INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS

1. WORKS PHASE INSURANCE COVERAGE

1.1 Subject to Section 6, from and after execution of this Project Agreement and until the later of the (i) East Substantial Completion Date, or (ii) West Substantial Completion Date, DB Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the City of Ottawa Construction Insurance Program (“COCIP”) the following insurances as further described in Appendix A to this Schedule 25:

- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
- (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
- (c) Project Specific Professional Liability; and
- (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).

1.2 Subject to Section 6, from and after execution of this Project Agreement and until the later of the (i) East Substantial Completion Date, or (ii) West Substantial Completion Date, DB Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:

- (a) Automobile Liability;
- (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-site operations and activities;
- (c) Aircraft and Watercraft Liability (if any exposure);
- (d) “All Risks” Marine Cargo (if any exposure);
- (e) “All Risks” Contractors’ Equipment;
- (f) Comprehensive Crime; and
- (g) WSIB.

2. NO LIMIT ON RECOVERY

2.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained by the City or by DB Co, shall in no way limit DB Co’s liability or obligations to the City or the City’s liability or obligations to DB Co, as applicable.

3. ADDITIONAL COVER

- 3.1 Without prejudice to the other provisions of this Schedule 25, the City and DB Co shall, at all relevant times and at their own expense, obtain and maintain those insurances which they are required to obtain and maintain by Applicable Law, or that they consider necessary.
- 3.2 The City reserves the right to require DB Co to purchase such additional insurance coverage as the City may reasonably require. The City also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Works, contract value, industry standards and availability of insurance) as the City may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by the City and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of the City.

4. RESPONSIBILITY FOR DEDUCTIBLES

- 4.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance DB Co is required to maintain under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

5. COOPERATION WITH INSURER'S CONSULTANT

- 5.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then the City and DB Co shall, and shall require the City Parties and the DB Co Parties, respectively, to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
 - (b) allow the insurer and its consultant to attend meetings between DB Co and the City (or, as applicable, and if reasonably required by the insurer, between DB Co and those engaged by or through DB Co).

6. UNINSURABLE RISKS

- 6.1 The term "Uninsurable Risk" means a risk, or any component of a risk, against which DB Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk from insurers licensed in the Province of Ontario; or
 - (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the Canadian insurance market.

DB Co has the onus of demonstrating, to the City's reasonable satisfaction that the foregoing definition applies to a particular risk.

- 6.2 DB Co shall notify the City as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide the City with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 6.3 DB Co and the City shall, as soon as possible following the provision of the notice referred to in Section 6.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if DB Co and the City are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 6.4 In the event that DB Co and the City, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 6.2, the City may, in its absolute discretion, either:
- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal installments over the course of such year, from the payment or payments otherwise due to DB Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or
 - (b) terminate this Project Agreement in accordance with Section 38 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 38 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to DB Co an amount equal to the Non-Default Termination Sum.
- 6.5 On the occurrence of an Uninsurable Risk, the City may, in its absolute discretion, either:
- (a) pay to DB Co an amount equal to the insurance proceeds that would have been payable to DB Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
 - (b) terminate this Project Agreement in accordance with Section 38 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 38 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to DB Co an amount equal to the Non-Default Termination Sum.
- 6.6 With respect to any Uninsurable Risk:
- (a) DB Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to

obtain insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and

- (b) Subject to Section 6.6(a), DB Co shall be relieved of its obligation to maintain insurance in respect of the Uninsurable Risk.

6.7 Where a risk which was previously an Uninsurable Risk ceases to be so, DB Co shall, at its own expense, obtain and maintain insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 6 shall no longer apply to such risk.

7. TOTAL OR SUBSTANTIAL DESTRUCTION

7.1 In the event of damage to, or destruction of, all or substantially all of the Project for which there is coverage under an insurance policy, any insurance proceeds received by DB Co shall first be applied so as to ensure the performance by DB Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Project or any other assets, materials or goods necessary or desirable for the carrying out of the Works, all in accordance with the terms of the Insurance Trust Agreement.

8. SUBCONTRACTORS

8.1 DB Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that DB Co shall determine the applicable limits to be obtained for such insurance. DB Co shall be solely responsible and liable for any damages which the City may suffer as a direct result of DB Co's failure to comply with the foregoing.

8.2 If DB Co receives notice that any Subcontractor employed by or through DB Co is not covered by any insurance required by this Schedule 25 to be obtained by DB Co, DB Co shall:

- (a) ensure that such insurance coverage is put in place;
- (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Works until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by DB Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

9. RENEWAL

9.1 DB Co shall provide to the City, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained by DB Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to the City, acting reasonably.

10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION

10.1 All insurance provided by DB Co, shall:

- (a) include DB Co, the City and Lenders as Named Insureds to the extent specified in Appendix A of this Schedule 25;
- (b) include the City, MOI, MTO, Province, Railway Company, RTG, Utility Company and Lenders as Additional Insureds, or loss payees with the Lenders' Agent as loss payee and as an Additional Insured, as their interests may appear, to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25;
- (c) except with respect to the Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 25, contain a waiver of subrogation as against the City and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
- (d) contain a breach of warranty provision whereby a breach of a condition by DB Co will not eliminate or reduce coverage for any other insured; and
- (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to the City or Lenders, without any right of contribution of any insurance carried by the City or Lenders.

11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

- 11.1 Prior to the execution of the Project Agreement, DB Co will provide the City with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 11.2 Prior to the execution of the Project Agreement, DB Co will provide the City with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents, exclusive of those contents that are not relevant to the Project, of all relevant insurance policies will be subsequently provided to the City no later than 90 days after execution of this Project Agreement.

12. FAILURE TO MEET INSURANCE REQUIREMENTS

- 12.1 If DB Co fails to obtain or maintain the insurance required by this Schedule 25, fails to furnish to the City a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then the City shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of DB Co, and the cost thereof shall either, at the City's option, be payable by DB Co to the City on demand or be deducted by the City from the next payment or payments otherwise due to DB Co.
- 12.2 If coverage under any insurance policy required to be obtained by DB Co should lapse, be terminated or be cancelled, then, if directed by the City, all work by DB Co shall immediately cease until satisfactory evidence of renewal is produced.

13. MODIFICATION OR CANCELLATION OF POLICIES

- 13.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by DB Co shall contain endorsements confirming that the policy will not be cancelled, adversely

reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to the City and the Lenders' Agent. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time, the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.

- 13.2 All insurance provided by DB Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to the City and the Lenders' Agent.
- 13.3 With respect to insurances described in Section 1.1 (a), (b) and (c) and Section 1.2 (d), breach of any of the terms or conditions of the policies required to be provided by DB Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to the City, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

14. INSURERS

- 14.1 All policies of insurance to be obtained by DB Co in accordance with this Schedule 25 shall be issued by financially sound Insurers acceptable to the City and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 14.2 To be eligible to provide insurance, an Insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than "A-" for three out of the previous five years but not lower than "B" at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (**Best**); or
 - (b) a Long-Term Financial strength Rating of not lower than "A-" for three out of the past five years but not less than "BBB" at any time during those five years, a Short-Term Financial Strength Rating of not lower than "A-3" for three out of the previous five years and a Financial Enhancement Rating of not lower than "A-" for three out of the previous five years but not less than "BB+" at any time during those five years, such ratings being those established by Standard and Poor's (**S&P**); or
 - (c) if the Insurer is not rated by Best or S&P, an Insurer that is acceptable to the City and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

15. POLICY TERMS AND CONDITIONS

- 15.1 All policies of insurance to be obtained by DB Co in accordance with this Schedule 25 shall be in form and substance satisfactory to the City, its insurance advisors and Lenders, acting reasonably.
- 15.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

16. FAILURE TO COMPLY

- 16.1 Neither failure to comply nor full compliance by DB Co with the insurance provisions of this Schedule 25 shall relieve DB Co of its liabilities and obligations under this Project Agreement.

17. PERFORMANCE SECURITY REQUIREMENTS

[REDACTED]

18. INSURANCE TRUST AGREEMENT

- 18.1 All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by DB Co prior to the later of (i) East Substantial Completion, or (ii) West Substantial Completion, which, in each case, relate to equipment purchased by the City, shall be payable solely to the City and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

APPENDIX A TO SCHEDULE 25

INSURANCE REQUIREMENTS

Works Phase Insurance – Confederation Line Extension

From execution of the Project Agreement until each Substantial Completion Date, as applicable (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by DB Co and arranged through the COCIP program

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
“All Risks” Course of Construction Property Including Boiler and Machinery	\$(REDACTED), including Property of Every Description and all other property and equipment supplied by the City or the City Parties for incorporation into the Project. Soft Costs \$(REDACTED) (representing (REDACTED)% of Recurring / Continuing Soft Costs) Extra and Expediting Expense (minimum \$(REDACTED) sub-limit) Principal Extensions: • Replacement Cost Valuation (Property) • Most Recent Technology Replacement Cost Valuation (Equipment or Machinery) • Flood (to policy limit with annual aggregate) • Natural or man-made earth movement, including earthquake, landslide or	(REDACTED)% of loss value / \$(REDACTED) minimum Earthquake \$(REDACTED) Contractors’ Equipment (Equipment used in Tunnelling – subject to Insurer approvals) \$(REDACTED) Flood/Water Damage \$(REDACTED) Underground Losses \$(REDACTED) Testing and Commissioning \$(REDACTED) All other losses	“All Risks” Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler & Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction. This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by the City or the Lenders.	TBD

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	- subsidence (to policy limit with annual aggregate) - Electronic Data Processing equipment and media, including data restoration and re-creation costs - Transit - Unnamed locations - Bylaws (with respect to Existing or Renovated Buildings) (minimum \$[REDACTED] sub-limit) - Debris Removal (minimum \$[REDACTED] sub-limit) - Off Premises Services (\$[REDACTED] sub-limit) - Professional Fees (minimum \$[REDACTED] sub-limit) - Fire Fighting Expenses (minimum \$[REDACTED] sub-limit) - Valuable Papers (minimum \$[REDACTED] sub-limit) - Accounts Receivable (minimum \$[REDACTED] sub-limit) - Green Building and/or LEED Upgrades (minimum \$[REDACTED] sub-limit) - Defence Costs (\$[REDACTED] sub-limit) - Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an	48 hour waiting period applicable to Off Premises Services - Service Interruption		

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	accident to measuring, testing or medical equipment and subject to a \$[REDACTED] sub-limit) • Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit) • Ammonia Contamination (minimum \$[REDACTED] sub-limit) • LEED Recertification, Commissioning, Testing Expenses (minimum \$[REDACTED] sub-limit) • Civil Authority Access Interruption (8 weeks) • Prevention of Ingress/Egress (8 weeks) • Permission for Partial Occupancy prior to Substantial Completion • Cost of Project Financing (12 Months), included in Soft Costs coverage • Margin of Profit Extension for Contractors • Testing and Commissioning (120 day limitation each component) Permitted Exclusions: • Cyber risk • Mould, fungi and fungal derivatives • Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum LEG 2 standard			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	• War risk • Terrorism • Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use • Contractors' equipment (unless values are declared and risk accepted by Insurers – Contractors' Equipment Endorsement noted) • Sanctions Clause • Munich Re 101 Endorsement • Munich Re 121 Endorsement			

Comments

- Named Insured includes DB Co, Lenders, Lenders' Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, and the City, as their respective interests may appear
- No provision permitted allowing a coinsurance penalty
- Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured
- Additional key extensions of coverage:
 - Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the Project
 - Losses payable in accordance with the Insurance Trust Agreement
 - Waiver of subrogation against all Named and Unnamed Insureds, including but not limited to DB Co, the City, Province, MTO, MOI, the Construction Contractor, subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
–	Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded			
–	Liberalization Clause			
–	Errors and Omissions			
–	Breach of Conditions			
–	Interims Payments Clause			

Underwriters Principal underwriters in compliance with Clause 14 of this Schedule 25.

Works Phase Insurance – Confederation Line Extension

From execution of the Project Agreement until each Substantial Completion Date, as applicable (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by DB Co and arranged through the COCIP program

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability	[\$[REDACTED]] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations Sub-limits: • [\$[REDACTED]] Non-Owned Automobile Liability • [\$[REDACTED]] Sudden and Accidental Pollution and Hostile Fire Pollution Liability • [\$[REDACTED]] “All Risks” Tenants' Legal Liability • [\$[REDACTED]] Prairie or Forest Fire Fighting Expenses • [\$[REDACTED]] Employee Benefits Administrative Errors and Omissions • [\$[REDACTED]] Contractors Rework • [\$[REDACTED]] Unmanned Aerial Vehicles • [\$[REDACTED]] Legal Liability for Damages To Non-owned Automobiles (SEF 94) • [\$[REDACTED]] / [\$[REDACTED]]	[\$[REDACTED]] per occurrence [\$[REDACTED]] per claim with respect to Contractors Rework [\$[REDACTED]] per claim with respect to each SEF 94, Tenants' Legal Liability, Employee Benefits Administrative Errors and Omissions and Prairie or Forest Fire Fighting Expenses	“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the East Substantial Completion Date, and West Substantial Completion Date, as applicable. Sudden and Accidental Pollution and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure). This coverage shall be primary with respect to the Project without right of contribution of any insurance	

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	Medical Payments		carried by the City, MTO, MOI or the Lenders.	
	Principal Extensions:			
	• Owner's and Contractor's Protective • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Employee Benefits Administrative Errors and Omissions • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunneling / grading and similar operations associated with the Project, as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by DB Co • Non-Owned Automobile Liability • Tenants' Legal Liability (All Risks) – subject to sub-limit • Medical Expenses – subject to sub-limit			

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	- Prairie or Forest Fire Fighting Expenses – subject to sub-limit - Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit - Permission for Unlicensed Vehicles (partial road use) - Unlicensed Equipment - Loss of Use Without Property Damage - Loading and Unloading of Automobiles - Broad Form Property Damage - Broad Form Completed Operations - Intentional Injury, committed to Protect Persons or Property - Accident Benefits - Worldwide Territory, subject to suits being brought in Canada or the US - Use of Drones			
	Permitted Exclusions:			
	- Injury to employees, where WSIB provides valid coverage - Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations - Operation of licensed motor vehicles, other than attached machinery while			

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	- used for its purpose, at the Project Site - Physical damage to the Project, except during Broad Form Products and Completed Operations extension period - Cyber risk - Mould, fungi and fungal derivatives - Professional liability of engineers, architects, and other professional consultants - Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use - Sanctions Clause			

Comments

- Named Insured includes DB Co and its Affiliates, the City, the Lenders, DB Co Parties involved in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants, (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site
- Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds
- Province, MTO, MOI, Railway Company, RTG, Utility Company as Additional Insureds
- Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured
- Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted
- Professional service activities integral to the project, but not covering engineers, architects or other professional consultants, i.e., incidental

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers				
• Waiver of subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including DB Co, the City, Province, MTO, MOI, Railway Company, RTG Utility Company, the Construction Contractor, subcontractors, sub-subcontractors, professional consultants, engineers, architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing				

Underwriters Principal underwriters in compliance with Clause 14 of this Schedule 25.

Works Phase Insurance – Confederation Line Extension

From execution of the Project Agreement until each Substantial Completion Date, as applicable (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by DB Co and arranged through the COCIP program

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
Project Specific Professional Liability	[\$[REDACTED]] minimum per claim / [\$[REDACTED]] in the aggregate (inclusive of defense and related costs and supplementary payments). Principal Extensions: • Primary insurance extension • Mitigation extension • Automatic addition of firms • Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the Named Insured under a personal services contract • Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named	[\$[REDACTED]] per claim, with respect to mitigation losses [\$[REDACTED]] per claim, all other losses	Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period plus coverage for an extended reporting period of not less than 36 months effective the East Substantial Completion Date and West Substantial Completion Date, as applicable. This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by the City, MTO, MOI or the Lenders.	

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
	Insured and resulting from a single error, omission or negligent act • Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims • Duty to defend, even if the allegations are groundless, false or fraudulent • Worldwide Territory, subject to suits brought in Canada Permitted Exclusions: • Express warranties or guarantees • Estimates on profit, return • Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents • Design or manufacture of any good or products sold or supplied by the Named Insured • Terrorism • Nuclear Liability • Judgments and awards deemed uninsurable by law • Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in			

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium

- the absence of such agreement
- Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees
- Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies
- Sanctions Clause

Comments

- Named Insured: DB Co (as applicable), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project
- Professional Services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services, and procurement services, including their replacements and/or sub-consultants of any tier
- Retroactive Date: Full retroactive coverage from date of first design activity
- Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy

Underwriters Principal underwriters in compliance with Clause 16 of this Schedule 25.

Works Phase Insurance – Confederation Line Extension

From execution of the Project Agreement until each Substantial Completion Date, as applicable (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by DB Co and arranged through the COCIP program

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability):	[\$[REDACTED]] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses Principal Extensions: - Hazardous Substances occurring at or emanating from the Project during the Policy period - Microbial Matter (including Fungus/Mould) - Underground/above-ground storage tanks - First Party Restoration and Clean-up Costs - Disposal Site Extension, including Transportation (reporting required) - Duty to Defend - Canada and US Territory - Contractual Liability - Emergency Response Costs Permitted Exclusions: - Terrorism	[\$[REDACTED]] per claim inclusive of defense and all costs and expenses	Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and off-Site, as required. Extended Reporting Period: Minimum of 36 months after East Substantial Completion Date and West Substantial Completion Date, as applicable. This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by the City, MTO, MOI or the Lenders.	

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium

- War
- Intentional Non-Compliance
- Prior Knowledge/Known Conditions
- WSIB
- Employers' Liability
- Professional Liability
- Nuclear Liability
- Property Damage to Motor Vehicles during Transportation

Comments

- Names Insured will include DB Co., its Affiliates, DB Co parties and all other parties engaged in the Works, including the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants
- The City, Province, MTO, MOI, Railway Company, RTG, Utility Company and the Lenders will be identified as Additional Insureds or insured clients of DB Co. and its Affiliates
- The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds

Underwriters Principal underwriters in compliance with Clause 14 of this Schedule 25.

Works Phase Insurance – Confederation Line Extension

From execution of the Project Agreement until each Substantial Completion Date, as applicable (Insurance for Works Phase)

Insurances to be provided, or caused to be provided by DB Co

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Automobile Liability	[\$REDACTED] (Minimum) for DB Co and DB Co's Construction Contractor vehicles [\$REDACTED] (Minimum) for vehicles of any other subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen or other persons working on or at the Site		Standard Ontario Owners Form for all vehicles operated by DB Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub- consultants in connection with the Project. Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle. Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to the City, MTO, MOI and the Lenders.	
Commercial General Liability and Non-Owned Automobile Liability	[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for DB Co and DB Co's Construction Contractor		Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and	
For DB Co, the	[\$REDACTED] each occurrence and in the			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent Employers Liability, Products and Completed Operations Liability, and the City's and Contractor's Protective extensions	annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants and sub-consultants, workmen, tradesmen, or other persons involved in the Works In both instances, limits of liability may be structured as any combination of primary plus supplementary layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess Sub-limits (DB Co and DB Co's Construction Contractor): • Full policy limits with respect to Non-Owned Automobile Liability • \$[REDACTED] Prairie or Forest Fire Fighting Expenses Principal Extensions (required to be provided by the DB Co. and its Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other persons involved in the Works):		including Broad Form Products and Completed Operations Liability. This Commercial General Liability insurance will cover off-site activities connected to the Project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy's Products and Completed Operations extension period. This insurance shall be maintained in effect during the Works phase until twelve (12) months following the earlier of the termination of the insured's person's involvement in the Works and East Substantial Completion Date and West Substantial Completion Date, as applicable. Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to the City, MTO, MOI and the Lenders.	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	• The City's and Contractor's Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works as applicable • Elevator and Hoist Collision Liability • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Permission for Unlicensed Vehicles' (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Worldwide Territory, subject to suits			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
being brought in Canada or the US				
Permitted Exclusions:				
• Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use				
<i>Comments</i>				
• The City and the Lenders will be identified as Additional Insureds or insured clients of DB Co and its Affiliates				

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Aircraft and Watercraft Liability	Minimum \$[REDACTED] inclusive, including \$[REDACTED] passenger hazard – Owned Aircraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to the City, MTO, MOI and the Lenders.	
(If any exposure)	Minimum \$[REDACTED] inclusive – Non-Owned Aircraft Minimum \$[REDACTED] inclusive Owned or Non- Owned Watercraft			

Comments

- The City, MTO, MOI and the Lenders will be identified as Additional Insureds or insured clients of DB Co and its Affiliates

“All Risks” Ocean Marine Cargo	[REDACTED]% Replacement Cost Valuation basis	\$[REDACTED]	Property of Every Description destined for incorporation into the Project, during marine transit, on a full replacement value basis, with no co-insurance provision. This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by the City or the Lenders.
(If any exposure)			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium

Comments

- Named Insured includes DB Co, Lenders, Lenders' Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants and the City, as their respective interests may appear.

**“All Risks”
Contractors’
Equipment**

To cover DB Co, the Construction Contractor, subcontractors, sub-subcontractors consultants and sub-consultants

If Site equipment is three years old or less the sum insured shall be equal to **[REDACTED]**% of the replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.

“All Risks” coverage on all owned, rented, leased or borrowed contractors’ equipment used at the Project Site.

Comments:

- Waiver of subrogation rights against DB Co, the City, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders' Agent as well as officers, directors, shareholders and employees of the foregoing

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Comprehensive Crime	[\$REDACTED] per loss with respect to Employee Dishonesty		Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of DB Co and DB Co Parties including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery. Custodial endorsement extending protection to clients. Insurance primary without right of contribution of any other insurance carried by the City or the Lenders.	
Underwriters (All non-COCIP Works Phase insurances that are to be provided or caused to be provided by DB Co) Principal underwriters in compliance with Clause 14 of this Schedule 25				
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	(i) DB Co and its Affiliates shall obtain and maintain at DB Co's expense, WSIB Insurance, in accordance with the Province of	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			Ontario requirements. (ii) DB Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all DB Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site. Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date. Upon Substantial Completion of the entire Project, DB Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date. On request, within 30 days of such request, DB Co shall deliver to the City evidence of the WSIB coverage maintained by any person involved in the Works, or	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			confirmation of that person's exemption from WSIB coverage.	

SCHEDULE 26

RECORD PROVISIONS

1 General Requirements

- 1.1** DB Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with the Project Agreement;
 - (c) in accordance with the requirements of Good Industry Practice;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of DB Co's and the Construction Contractor's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in electronic format in accordance with the City's designated record keeping system;
 - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable DB Co to comply with DB Co's obligations under Section 26 of the Project Agreement; and
 - (j) in a form that is capable of audit.
- 1.2** DB Co shall retain and maintain all records on the Site in addition to retaining and maintaining records referred to in Section 2.1 in electronic format on the City's designated record keeping system.
- 1.3** Wherever practical, original records shall be retained and maintained in a hard copy form. DB Co may retain true copies of original records where it is not practical to retain original records.
- 1.4** Any drawings (including, without limitation, the As-Built Drawings and Record Drawings) required to be made or supplied pursuant to this Project Agreement on the most updated version of the applicable software and editable in updated base software format (native files in a standard format), and when printed, be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by DB Co to City, and shall conform to the Output Specifications, Good Industry Practice, and the CAD Standards. All drawings are to be submitted via City's electronic control management system, with one hard copy provided to the City. DB Co shall make or supply drawings and other documents in such form as has been agreed by the Parties

and shall include secure back up facilities. The City shall provide DB Co access to the City's electronic control management system.

- 1.5** Records shall be stored in electronic format within the City's electronic control management system where DB Co shall have access thereto and will continue to have access thereto, such that City will be able to read, copy, download, and search same without licence or payment.
- 1.6** Subject to Sections 1.7 and 1.8, DB Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for a minimum period of at least 7 years or such longer period as required by Applicable Law.
- 1.7** DB Co shall notify City if DB Co wishes to destroy any records referred to in this Schedule 26, or in respect of which the required period Section 1.6 or under Applicable Law for their retention has expired. The Parties agree that:
 - (a) within 60 days of such notice, City may elect to require DB Co to deliver such records to City, in which case DB Co shall, at the expense of City, deliver such records (with the exception of Sensitive Information) to City in the manner and to the location as City shall specify; or
 - (b) if City fails to notify DB Co of its election pursuant to Section 1.7(a) within such 60 day period, DB Co may, at its expense, destroy such records.
- 1.8** In the event of a termination of this Project Agreement in accordance with its terms, DB Co shall deliver all records that DB Co retains and maintains pursuant to this Schedule 26 to City in the manner and to the location that City shall reasonably specify. City shall make available to DB Co all the records DB Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. DB Co may deliver true copies of original records required by:
 - (a) statute to remain with DB Co;
 - (b) DB Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
 - (c) DB Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9** Where the termination of this Project Agreement arises:
 - (a) as a result of a City Event of Default or pursuant to Section 36.3 of the Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by City; or
 - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Final Completion Date or the Termination Date, as applicable (unless a longer period is required by Applicable Law), shall be borne by DB Co.

1.10 Within 30 days after the end of each calendar year (or partial year for the first and last year) of the Project Term, DB Co shall deliver to City a report, as reasonably requested by City in connection with City's financial reporting, detailing to the best of DB Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that DB Co has or may have against City or that may be owing by City to DB Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.

1.11 DB Co shall provide to the City:

- (a) as soon as available and, in any event, within 60 days after the end of the first three fiscal quarters in each fiscal year, the unaudited consolidated financial statements of DB Co, including an unaudited balance sheet and an unaudited statement of income, for each such fiscal quarter, all prepared in accordance with the Applicable Accounting Standards (as defined in the Lending Agreement); and
- (b) as soon as available and, in any event, no more than 120 days after the end of each fiscal year, the annual audited financial statements of DB Co, prepared in accordance with the Applicable Accounting Standards (of the relevant jurisdiction in which the statements are produced) applied on a basis consistent with that of the preceding year,

and all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 42 of the Project Agreement, shall be treated by the City as Confidential Information of DB Co.

2 Records To Be Kept

2.1 Without limiting any other requirement of this Project Agreement, DB Co shall prepare, retain and maintain at its own expense:

- (a) the Project Agreement and the Project Documents, including all amendments to such agreements;
- (b) all records relating to the appointment and replacement of the City Representative and the DB Co Representative;
- (c) any documents, drawings (including, without limitation, the As-Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
- (d) any documents relating to Development Approvals and other DB Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
- (e) all records relating to any statutory inspections of the Project or the Site, including any roadways;
- (f) a complete record of construction, including:

- (i) Construction Access Management Plan and all sub-plans;
 - (ii) Traffic and Transit Management Plans and all sub-plans;
 - (iii) all records generated by the Geotechnical Instrumentation and Monitoring Plan (as described in Schedule 15 – Output Specifications), including (but not limited to) baseline readings, routine monitoring records, and tunnel construction monitoring records;
 - (iv) records of all pre-construction inspections and post-construction inspections (as described in Schedule 15 – Output Specifications), including a log identifying corrective actions;
 - (v) records of all geotechnical and environmental investigations performed by DB Co (as described in Schedule 15 – Output Specifications), including (but not limited to) records pertaining to the decommissioning of any monitoring wells and the location of any well casings;
 - (vi) Works progress photography;
 - (vii) construction notices or other communications with adjacent businesses, property owners or tenants;
 - (viii) planned and unplanned interruptions of Utility Infrastructure;
 - (ix) a complaints log including responses and any corrective action; and
 - (x) any other items as requested by the City from time to time.
- (g) any notices, reports, results and certificates relating to Substantial Completion and Final Completion and completion of the DB Co Commissioning;
- (h) all operation and maintenance manuals;
- (i) any documents relating to events of Force Majeure, Delay Events, Compensation Events, and Relief Events;
- (j) all documents submitted in accordance with Schedule 22 - Variation Procedure;
- (k) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (l) any documents related to a DB Co Change in Ownership or Change in Control;
- (m) any documents relating to any Refinancing;
- (n) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
- (i) DB Co's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;

- (ii) DB Co's liabilities or payments for capital taxes based on or measured by the capital of DB Co;
 - (iii) the withholdings of any payments by DB Co; or
 - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
 - (o) the financial accounts of DB Co referred to in Section 1.11 above;
 - (p) [not used];
 - (q) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by DB Co with respect to the Works;
 - (r) any documents relating to insurance and insurance claims;
 - (s) all Jointly Developed Materials; and
 - (t) all other records, documents, information, notices or certificates expressly required to be produced or maintained by DB Co pursuant to this Project Agreement.
- 2.2** Either Party may review the documents required to be prepared, retained and maintained by DB Co pursuant to Section 2.1.

SCHEDULE 27
DISPUTE RESOLUTION PROCEDURE

1 General

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of this Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Project Agreement, including, without limitation, this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 27.
- 1.2 The Parties agree that at all times each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
 - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 9 of this Schedule 27.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b) of this Schedule 27, either Party may deliver to the City Representative or the DB Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Sections 2 to 9 of this Schedule 27, as applicable, as more particularly described in this Schedule 27. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the City Representative, if given by City, or by the DB Co Representative, if given by DB Co.
- 1.4 In the event of a Dispute in respect of any Critical Item set out in Section 12 of this Schedule 27, the provisions of that Section 12 shall solely govern the resolution of such Dispute and, except as set forth in Section 12.3 of this Schedule 27, the provisions of Sections 1.2 and 2 to 9 of this Schedule 27 shall not apply.

2 Amicable Resolution by Party Representatives

- 2.1 On receipt of a Notice of Dispute, the City Representative and the DB Co Representative (collectively “**Party Representatives**” and individually “**Party Representative**”) shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

3 Amicable Resolution by Senior Officers of each Party

- 3.1 If, following the process referred to in Section 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), a Dispute is not resolved by

the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:

- (a) is in a position of authority above that of the City Representative or the DB Co Representative, as the case may be; and
- (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.

3.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

4 Independent Certifier

4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 of this Schedule 27, if the Parties fail to resolve any Dispute through the process referred to in Sections 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter), or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.

4.2 All Disputes (other than Systems Integration Disputes which shall be resolved in accordance with Section 5 below) related to the Works and that:

- (a) arise prior to, or otherwise in relation to, East Substantial Completion or West Substantial Completion;
- (b) relate to completion of Minor Deficiencies;
- (c) relate to whether any proposed work constitutes a Variation;
- (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 31 of the Project Agreement and Schedule 22 - Variations;
- (e) are referred to in this Project Agreement for determination by the Independent Certifier; or
- (f) relate to the Certification Services or any Certification Service Variations (as those terms are defined in the Independent Certifier Agreement);

shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be specified in this Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

- 4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 4.2 of this Schedule 27.
- 4.4 The Independent Certifier's decision to issue or not to issue a Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining a Substantial Completion Payment Date, and a Dispute in relation to a Substantial Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27. Save and except as aforesaid, the Independent Certifier's determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier's decisions shall be resolved pursuant to this Schedule 27, provided however that Section 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

5 System Integration Verifier

- 5.1 This Section 5 applies to all Systems Integration Disputes, if the Parties fail to resolve such Systems Integration Dispute through the process referred to in Sections 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter), or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.
- 5.2 All Systems Integration Disputes shall initially be submitted to the Systems Integration Verifier for independent determination by the Systems Integration Verifier within 10 Business Days after submission to the Systems Integration Verifier, or such other period of time as may be agreed by the Parties, acting reasonably.
- 5.3 The Parties shall cooperate with the Systems Integration Verifier and provide such information, records and documents as may be required by the Systems Integration Verifier to make the determination within the period referred to in Section 5.2 of this Schedule 27.
- 5.4 Where it is determined by the Systems Integration Verifier that:
- (a) corrective measures must be taken by DB Co to resolve a Systems Integration Dispute, those measures must be implemented by DB Co as soon as reasonably practical, without payment by the City unless (i) the Systems Integration Verifier determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a subsequent proceeding;
 - (b) corrective measures are not required to be taken by DB Co to resolve a Systems Integration Dispute, the City may, at its option, require corrective measures to be taken forthwith by DB Co, in which case those measures must be implemented by DB Co as soon as reasonably practical provided that the City undertakes to pay DB Co for Direct Costs, plus reasonable overhead and profit incurred by DB Co as such costs are so incurred; provided that no such costs should exceed the amount DB Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to the City's right to contest the determination made by the Systems Integration Verifier in a subsequent proceeding. The City shall provide DB Co such reasonable

extensions of time in respect of DB Co's obligations under this Project Agreement necessary to allow DB Co to effect the corrective measures and such extension of time may be treated as a Delay Event if so determined by the Independent Certifier with input from the Systems Integration Verifier.

- 5.5 The Systems Integration Verifier's determinations are not binding on the Parties, and all Disputes in relation to the Systems Integration Verifier's determinations shall be resolved pursuant to this Schedule 27, provided however that Section 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

6 Adjudication

- 6.1 If the Parties fail to resolve any Dispute through the process referred to in Sections 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Section 4.2 of this Schedule 27, a Systems Integration Dispute, or a Dispute referred to arbitration or litigation pursuant this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), either Party may, by written notice signed by their Party Representative and delivered to the other Party Representative, refer the Dispute to an adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the "**Adjudicator**").
- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties within 5 Business Days after delivery of the notice requiring that the Dispute be resolved by an Adjudicator or, failing agreement within such 5 Business Days, either Party shall apply to the Ontario Superior Court of Justice for appointment of the Adjudicator, in which case the court shall appoint the Adjudicator at the earliest opportunity from the list of potential Adjudicators submitted by the Parties or, if either or both Parties fail to submit their list of potential Adjudicators within 7 Business Days, the court may appoint any person as the Adjudicator who meets the requirements set out in this Schedule 27 for qualifications and experience of the Adjudicator pursuant to the *Arbitration Act* (Ontario) as if the adjudicator was an arbitrator under the *Arbitration Act* (Ontario). The Adjudicator shall:
- (a) be independent of and at arm's length to DB Co, City, any Government Entity, RTG, and RTG Party, the Lenders and any other person having an interest in the Project or any of the Contract Documents;
 - (b) if the Dispute arises during the life of the Project Agreement, be familiar with design and construction of a project similar to the Project; and
 - (c) be a person who has the qualifications and experience with respect to the particular issues in Dispute.
- 6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council's *Model Adjudication Procedure: Fourth Edition* (the "**Model Adjudication Procedure**") the terms of which are incorporated herein by reference, subject to the following modifications:
- (a) notwithstanding paragraph 14 of the *Model Adjudication Procedure*, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary,

the onus of proving that the Project was designed and constructed in accordance with all relevant specifications and requirements set forth in the Project Agreement is on DB Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;

- (b) notwithstanding paragraphs 16 and 24 of the *Model Adjudication Procedure*, in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event, Delay Event and/or Compensation Event. Unless otherwise provided for in this Schedule 27, the Adjudicator's decision shall be binding on the Parties, but not final;
- (c) notwithstanding paragraphs 29 and 30 of the *Model Adjudication Procedure*, the Adjudicator's costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses;
- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act, 1991* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator (other than as set out in Section 6.2) or his determination or the procedure by which he reached his determination;
- (e) notwithstanding paragraph 26 of the *Model Adjudication Procedure*, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue a Substantial Completion Certificate shall be final and binding solely in respect of determining a Substantial Completion Payment Date, and a Dispute in relation to a Substantial Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27;
- (f) the Adjudicator shall execute a non-disclosure agreement (the “**Non-Disclosure Agreement**”) in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and

- (g) notwithstanding paragraph 34 of the *Model Adjudication Procedure*, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by DB Co to resolve a Dispute, those measures must be implemented by DB Co as soon as reasonably practical, without payment by City unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
- (b) corrective measures are not required to be taken by DB Co to resolve a Dispute, City may, at its option, require corrective measures to be taken forthwith by DB Co, in which case those measures must be implemented by DB Co as soon as reasonably practical provided that City undertakes to pay DB Co for Direct Costs, plus reasonable overhead and profit incurred by DB Co as such costs are so incurred; provided that no such costs should exceed the amount DB Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to City's right to contest the determination made by the Adjudicator in a subsequent proceeding. City shall provide DB Co such reasonable extensions of time in respect of DB Co's obligations under this Project Agreement necessary to allow DB Co to effect the corrective measures and such extension of time may be treated as a Delay Event if so determined by the Adjudicator.

6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator's determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator's determination.

7 Referral of Disputes to Arbitration or Litigation

7.1 If:

- (a) the amount awarded the Adjudicator pursuant to Section 6 of this Schedule 27 is more than **\$(REDACTED)** (index linked) in the aggregate or **\$(REDACTED)** (index linked) in any one year;
- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party;
- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Section 6 of this Schedule 27 shall not apply to resolve such Dispute; or
- (d) a Notice of Dispute has been issued for a Systems Integration Dispute in relation to the Systems Integration Verifier's decisions for which Section 5.5 of this Schedule 27 provides that Section 6 of this Schedule 27 shall not apply to resolve such Dispute,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 of this Schedule 27 or a consolidation of proceedings pursuant to Section 11 of this Schedule 27, either Party may, by written notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 8 of this Schedule 27 upon the written consent of the other Party. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Adjudicator's decision or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and decision of the Adjudicator, the Independent Certifier, or the Systems Integration Verifier, as applicable, that is to be the subject of the arbitration.

- 7.2 If a Party is entitled to refer a Dispute to which Section 6 of this Schedule 27 apply to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, the Adjudicator shall not be called as a witness by either party in any arbitration or litigation proceeding.

8 Resolution by Arbitration

- 8.1 Upon the mutual written consent of the parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4, 5 and 6 (to the extent required) of this Schedule 27, and
- (b) all other requirements set out in this Schedule 27 have been satisfied,

such Dispute may be referred to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section.

- 8.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 7.1 of this Schedule 27 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.

- 8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27; and
- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:

- (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or
- (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
- (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.

8.4 If the arbitration tribunal is comprised of three arbitrators:

- (a) the arbitrators shall be appointed as follows:
 - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27;
 - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27;
 - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
 - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27; and
- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.

8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.

8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Works or in the business affairs of City, DB Co, RTG, any RTG Party or any consultant, subconsultant or subcontractor of any of them.

- 8.7 The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
 - (b) require some or all of the evidence to be provided by affidavit;
 - (c) hold a hearing at which evidence and submissions are presented by the Parties;
 - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
 - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
 - (f) inspect the Works, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
 - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
 - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 8.8 The place of arbitration shall be Ottawa, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
 - (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.

- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

9 Litigation

- 9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Adjudicator's award or determination pursuant to Section 6 of this Schedule 27, or if applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Section 6 of this Schedule 27 shall not apply, or if applicable a Notice of Dispute has been issued following receipt of a determination of the Systems Integration Verifier if the Dispute is a Systems Integration Dispute in relation to the Systems Integration Verifier's determination for which Section 5.5 of this Schedule 27 provides that Section 6 of this Schedule 27 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:
- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than **[\$[REDACTED]]** (index linked) in the aggregate or **[\$[REDACTED]]** (index linked) in any one year; or
 - (b) if the Dispute is considered by City to involve material issues of public health or safety.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Adjudicator's determination, or the Notice of Dispute referred to in Section 7.1(c) or (d) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Adjudicator,

Independent Certifier, or Systems Integration Verifier, as applicable, that is to be the subject of the litigation.

9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1 of this Schedule 27, then:

(a) provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 11 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27; and

(b) **[Intentionally Deleted].**

9.3 **[Intentionally Deleted].**

10 Consolidation of Project Agreement Adjudication, Arbitration and Litigation

10.1 For all Disputes that arise prior to East Substantial Completion, unless:

- (a) both Parties otherwise agree; or
- (b) the issue in a particular Dispute arises in connection with the Review Procedure; or
- (c) the issue in a particular Dispute is such that waiting until after East Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties; or
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving East Substantial Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with Third Party Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27;

all adjudication, arbitral and litigation proceedings between the Parties prior to East Substantial Completion with respect to the East Works shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after East Substantial Completion.

10.2 For all Disputes that arise prior to West Substantial Completion, unless:

- (a) both Parties otherwise agree; or
- (b) the issue in a particular Dispute arises in connection with the Review Procedure; or
- (c) the issue in a particular Dispute is such that waiting until after West Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties; or
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving West Substantial Completion; or

- (e) in respect to a particular Dispute, the Dispute is consolidated with Third Party Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27;

all adjudication, arbitral and litigation proceedings between the Parties prior to West Substantial Completion with respect to the West Works shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after West Substantial Completion.

11 Consolidation with Third Party Disputes

- 11.1 Subject to Section 11.4 of this Schedule 27, if either Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (“**Project Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if City, DB Co and the other Parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.

- 11.2 Subject to Section 11.4 of this Schedule 27, if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:

- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
- (b) one of the Parties is brought directly into the Third Party Litigation as a Party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

- 11.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other Parties, as applicable and as required to resolve the Dispute and to

make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.

11.4 Sections 11.1 and 11.2 of this Schedule 27 only apply:

- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party's liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
- (b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

12 Critical Items

12.1 In the event that a Dispute relates to one or more of the following elements, features or aspects of the Project (the "**Critical Items**"):

- (a) **[Not Applicable]**.

the effect of which is likely to materially impede the proper and timely completion of the Works, such Dispute shall be resolved in accordance with Section 12.2 of this Schedule 27.

12.2 Any Dispute with respect to any Critical Item shall be resolved in an expeditious manner and shall not be subject to the Dispute Resolution Procedure set forth in this Schedule 27 and must be resolved to the satisfaction of City and DB Co within two hours of being reported by DB Co or otherwise identified by City. For the purposes of this Section 12, "resolved" means a proposed solution must be agreed between the City Representative and DB Co within that two hour period, including a time frame for implementing a proposed solution. For greater certainty, it is understood that in some cases the nature or extent of a Critical Item may not permit that Critical Item to be solved or otherwise resolved within two hours.

12.3 In the event that:

- (a) there is a Dispute related to a Critical Item that cannot be resolved within the two hours set forth in Section 12.2 of this Schedule 27,
 - (i) as to the existence of a problem or its extent, or
 - (ii) with respect to the proposed solution, or
- (b) there is a Dispute concerning the effectiveness of any solution proposed in respect of a Critical Item

then that Dispute must be resolved by an Adjudicator in accordance with Section 6 of this Schedule 27 within one Business Day of such Adjudicator being asked to undertake such an adjudication. Decisions of the Adjudicator with respect to Disputes relating to Critical Items are final and binding with respect to the action being taken, but not with respect to fault or the cost or timing implications of the matter in dispute. Decisions of the Adjudicator with respect to fault or

the cost or timing implications shall be treated as a Dispute and determined in accordance with the provisions of this Schedule 27.

13 Miscellaneous

- 13.1 DB Co and City shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to DB Co's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), DB Co shall proceed in accordance with the direction of City, and in the event the matter in dispute is determined in favour of DB Co, proceeding in accordance with City's position shall: (i) subject to and in accordance with Section 32 of this Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 33 of this Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. For greater certainty:
- (a) in respect of any Dispute relating to the Works referred to in Section 4.2 of this Schedule 27, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding; and
 - (b) in respect of any Systems Integration Dispute, the Systems Integration Verifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of the Systems Integration Verifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.
- 13.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction, if necessary to prevent irreparable harm to a Party.
- 13.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, and on the amount of any award or judgment as follows:
- (a) for amounts payable by DB Co to City, DB Co shall indemnify City as provided for at Section 46.1(e) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to DB Co or, as applicable, any underpayment or non-payment by DB Co from the date of any overpayment to DB Co or, as applicable, from the date on which payment was due under this Project Agreement to City until the date of payment; or
 - (b) for amounts payable by City to DB Co, City shall indemnify DB Co as provided for at Section 46.2(c) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to City or, as applicable, any underpayment or non-payment by City from the date of any overpayment to City or, as applicable, from the date on which payment was due under this Project Agreement to DB Co until the date of payment.

- 13.4 DB Co shall ensure that any and all documents and other information in the possession or control of any DB Co Party that are available to DB Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an expert, the Systems Integration Verifier, an adjudicator, an arbitrator or a court of competent jurisdiction, are made available in a timely manner to City and the City Representative.
- 13.5 City shall ensure that any and all documents and other information in the possession or control of any City Party that are available to City and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or be an expert, the Systems Integration Verifier, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to DB Co and the DB Co Representative.
- 13.6 The Parties can, by written agreement, on a Dispute by Dispute basis:
- (a) extend any or all timelines set out in this Schedule 27;
 - (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4, 5 and 6 of this Schedule 27 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27;
 - (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27;
 - (d) **[Intentionally Deleted]**; and
 - (e) agree to resolve a Dispute relating to Critical Items by adjudication, arbitration or litigation notwithstanding the requirements of Section 12 of this Schedule 27.
- 13.7 This Schedule 27 shall survive the expiration or termination of this Project Agreement for any reason.

SCHEDULE 28

REFINANCING

1. DEFINITIONS

1.1 In this Schedule 28 – Refinancing, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 28 – Refinancing) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

(a) “**Exempt Refinancing**” means:

- (i) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
- (ii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to DB Co under those agreements;
- (iii) any Qualifying Bank Transaction;
- (iv) any Rescue Refinancing;
- (v) any Refinancing that was approved by the City prior to the execution of the Project Agreement and occurs during the first six months following the date of the Project Agreement;
- (vi) any amendment, variation or supplement of any agreement approved by the City as part of any Variation under the Project Agreement; or
- (vii) any Permitted Borrowing.

(b) “**Qualifying Bank**” means a lending institution that is:

- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
- (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls, either directly or through its affiliates, funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person or a person whose standing or activities compromise (i) the City’s reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system in the City of Toronto, the Province of Ontario or the Project.

(c) “**Qualifying Bank Transaction**” means:

- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;

- (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
 - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of DB Co, whether by way of security or otherwise.
- (d) “**Qualifying Refinancing**” means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (e) “**Refinancing**” means:
 - (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
 - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
 - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of DB Co whether by way of security or otherwise; or
 - (iv) any other arrangement put in place by DB Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting DB Co’s ability to carry out any of the foregoing provisions of this definition.
- (f) “**Refinancing Financial Model**” means a comprehensive and detailed financial model satisfactory to the City, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
 - (i) cash flows for the entire Project Term;
 - (ii) any changes in structure and funding since the date of the Project Agreement;
 - (iii) the performance of the Works to the date of the Refinancing;
 - (iv) macroeconomic assumptions; and
 - (v) all other relevant factorshaving regard to any Exempt Financings previously undertaken in respect of which no Refinancing Gain is payable, and any Qualifying Financings in respect of which a Refinancing Gain has previously been paid.
- (g) “**Refinancing Gain**” means an amount equal to the greater of zero and $(A - B)$, where:

A = the total Cost of the Financing as calculated using the Refinancing Financial Model but without taking into account the effect of the Refinancing.

B = the total Cost of the Financing as calculated using the Refinancing Financial Model and taking into account the effect of the Refinancing.

- (h) “**Rescue Refinancing**” means any Refinancing which takes place due to the failure or prospective failure of DB Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of the City, whether actual or potential.

2. REFINANCING

2.1 DB Co shall not carry out:

- (a) any Qualifying Refinancing unless DB Co has obtained the prior written consent of the City, subject to Section 2.2; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless DB Co has delivered Notice of such Refinancing to the City before five Business Days of such Refinancing, except that such Notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing.

2.2 The City may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom DB Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of DB Co to perform its obligations under the Project Documents or the Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of the City, whether actual or contingent, present or future, known or unknown.

2.3 The City shall be entitled to receive:

- (a) a **[REDACTED]**% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of **[\$[REDACTED]]**;
- (b) a **[REDACTED]**% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of **[\$[REDACTED]]** and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of **[\$[REDACTED]]**; and
- (c) a **[REDACTED]**% share of any further Refinancing Gain arising from a Qualifying Refinancing.

- 2.4 DB Co shall promptly provide the City with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. The City shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). DB Co shall promptly, and, in any event, within five Business Days after receiving a written request from the City, provide any information in relation to a proposed Refinancing as the City may reasonably require. DB Co shall keep the City informed as to any changes to the terms of the Refinancing. Both the City and DB Co shall at all times act in good faith with respect to any Refinancing.
- 2.5 The City's share of the Refinancing Gain shall, subject to prior consent of DB Co, be received as a reduction in the amount of a Substantial Completion Payment and if such consent is not provided, shall be paid to the City from the net proceeds of the Qualifying Refinancing. Notwithstanding the preceding provisions, the City shall have the right to receive its share of the Refinancing Gain by way of a reduction to the latest Substantial Completion Payment irrespective of DB Co's prior consent.
- 2.6 The City and DB Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain. If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of the City's share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure. If applicable, both the City and DB Co shall work collaboratively to establish the rate setting process required to complete the Refinancing.
- 2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days following any Qualifying Refinancing, DB Co will reimburse the City for all such reasonable out-of-pocket costs incurred by the City.

SCHEDULE 29

FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

THIS GUARANTEE is made as of the [•] day of [•], 20[•]

BETWEEN:

THE CITY OF OTTAWA (“City”)

- AND -

EAST WEST CONNECTORS GP, [REDACTED] (“DB Co”)

- AND -

[•], a corporation incorporated under the laws of [•] (“Construction Guarantor”)

WHEREAS:

- A. City and DB Co have entered into a project agreement dated as of the [•] day of [•], 20[•] (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Project Agreement**”).
- B. DB Co and [REDACTED] (“**Construction Contractor**”) have entered into a design and construction contract dated as of the [•] day of [•], 20[•] (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Design and Construction Contract**”), which requires the Construction Guarantor to provide a guarantee of the obligations of Construction Contractor in favor of DB Co.
- C. As an inducement to City to enter the Project Agreement with DB Co, Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to City, as a direct obligation, the full and prompt performance and observance by Construction Contractor of its obligations in the Design and Construction Contract, and in furtherance thereof has agreed to enter into this Guarantee.
- D. On or about the date hereof, (i) the City, DB Co and [REDACTED], acting as agent for and behalf of the Lenders (the “**Lenders’ Agent**”) intend to enter into a direct lender agreement (the “**Lenders’ Direct Agreement**”) to provide for, inter alia, certain rights in favor of the Lenders’ Agent with respect to the Project Agreement Design, and (ii) the Construction Contractor, the Lenders’ Agent and DB Co intend to enter into a direct lender agreement on or about the date hereof (the “**Construction Contractor Direct Agreement**”) to provide for, inter alia, certain rights in favor of the Lenders’ Agent with respect to the Design and Construction Contract.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Project Agreement.
- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement.
- (c) For the purpose of this Guarantee, the term “**Guaranteed Obligations**” has the meaning given in Section 2.1(a).

1.2 Survival and Term

This Guarantee shall survive the termination or other expiry of the Project Agreement. The obligations under this Guarantee shall commence on Financial Close and the liability of the Guarantor hereunder shall terminate concurrently with the expiration of the Latent Defect Warranty Period, except with respect to any claims existing and for which notice has been given prior to such expiry date, in which case this Guarantee shall not terminate with respect to such claims until such claims have been satisfied in full.

2. GUARANTEE

2.1 Guarantee

- (a) Construction Guarantor does hereby absolutely, unconditionally and irrevocably guarantee jointly to each of City and DB Co (each a “**Guaranteed Party**” and collectively, the “**Guaranteed Parties**”), as a direct obligation, the full and prompt performance and observance by Construction Contractor of each and every covenant, agreement, undertaking and obligation of Construction Contractor contained in the Design and Construction Contract (collectively, the “**Guaranteed Obligations**”),
- (b) Notwithstanding any other provision of this Guarantee:
 - (i) Construction Guarantor’s undertakings and obligations are derivative of and not in excess of Construction Contractor’s obligations under the Design and Construction Contract and Construction Guarantor retains all rights, claims, defences and limitations of liability possessed by Construction Contractor under the terms of the Design and Construction Contract or arising from the parties’ performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Construction Contractor, including, for greater certainty, that the alleged non-performance or non-observance by Construction Contractor of the Guaranteed Obligations arises out of or is a result of either a City Event of Default as set out in section 37.1(a) of the Project Agreement or a DB Co event of default under the Design and Construction Contract that is triggered by a City Event of Default; and
 - (ii) in no event shall the aggregate liability of the Construction Guarantor, and any of its affiliates, employees, officers and directors, under this Guarantee exceed an amount equal

to [REDACTED]% of the Contract Price, but this limit of liability shall not extend to interest and enforcement costs payable under this Guarantee.

2.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by Construction Contractor shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.
- (b) The Guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Design and Construction Contract and Construction Guarantor shall have fully and satisfactorily discharged all of its obligations under this Guarantee.
- (c) The liability of Construction Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no notice to Construction Guarantor shall be required in respect of):
 - (i) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;
 - (ii) any amalgamation, merger or consolidation of Construction Contractor or Construction Guarantor or any sale, lease or transfer of any of the assets of DB Co or Construction Guarantor;
 - (iii) any Change in Ownership of Construction Contractor or Construction Guarantor;
 - (iv) the termination or other expiry of the Project Agreement or the Design and Construction Contract;
 - (v) any Delay Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
 - (vi) any change in the financial condition of Construction Contractor or Construction Guarantor;
 - (vii) any DB Co Event of Default described in Section 36.1(a)(i) of the Project Agreement or the equivalent Construction Contractor event of default under the Design and Construction Contract, or any resulting release, stay or discharge of any Guaranteed Obligation;
 - (viii) any lack or limitation of power, incapacity or disability on the part of Construction Contractor or any other irregularity, defect or informality on the part of Construction Contractor with respect to the Guaranteed Obligations;

- (ix) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, Construction Guarantor in respect of the Guaranteed Obligations or this Guarantee;
- (x) the exercise of any rights under the Lending Agreements, including the right of Lenders (A) to cure either: (x) any DB Co Event of Default by or on behalf of DB Co under the Project Agreement or (y) any Construction Contractor event of default by or on behalf of Construction Contractor under the Design and Construction Contractor and/or (B) to assume the obligations of DB Co and complete the Guaranteed Obligations in the manner provided in the Design and Construction Contract;
- (xi) the assignment by City in accordance with the provisions of Section 49.2 of the Project Agreement; or
- (xii) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against Construction Guarantor.

For the avoidance of doubt, to the extent that the occurrence of any of the circumstances described in Section 2.2(c)(v), Section 2.2(c)(x) or Section 2.2(c)(xi) above results in a modification to the scope or extent of the Guaranteed Obligations, then the Guarantor's obligations under this Guarantee shall apply in relation to the Guaranteed Obligations as so modified.

- (d) The obligations and liabilities of Construction Guarantor hereunder shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Construction Contractor or Construction Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) The Guaranteed Parties shall not be bound to exhaust their recourse against Construction Contractor or others or any securities or other guarantees either Guaranteed Party may at any time hold before being entitled to performance of the Guaranteed Obligations by the Construction Guarantor and Construction Guarantor renounces all benefits of discussion and division.
- (f) It is the intent and purpose hereof that Construction Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, Construction Guarantor hereby waives notice of acceptance of this Guarantee and of the non-performance by Construction Contractor, diligence, presentment, protest, dishonour, demand for performance from either Guaranteed Party and notice of non-performance or failure to perform on the part of Construction Contractor and all other notices whatsoever. The Guarantee hereunder is a guarantee of performance and compliance. In order to hold Construction Guarantor liable hereunder, there shall be no obligation on the part of either Guaranteed Party at any time to demand or resort for performance to Construction Contractor, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that Construction Contractor be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and each Guaranteed Party shall have the

right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against Construction Contractor are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, Construction Contractor shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such default, the Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.

- (g) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of Construction Guarantor under this Guarantee and without in any way requiring the consent of or giving notice to Construction Guarantor, the Guaranteed Parties may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Construction Contractor and/or Construction Guarantor or others, including any other guarantor, as the Guaranteed Parties may see fit and the Guaranteed Parties may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as the Guaranteed Parties may see fit.
- (h) Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Guarantee. Construction Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of Construction Guarantor to City do not merge with or end Construction Guarantor's obligations hereunder.
- (i) The liability of Construction Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on Construction Guarantor.

3. REPRESENTATIONS AND WARRANTIES

3.1 Construction Guarantor Representations and Warranties

- (a) Construction Guarantor represents and warrants to City that as of the date of this Guarantee: **[REPRESENTATIONS TO BE UPDATED PER GUARANTOR BASED ON JURISDICTION OF INCORPORATION]**
 - (i) Construction Guarantor is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with the Ministry of Government and Consumer Services of Ontario with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Guarantee and the Ancillary Documents to which it is a party and to perform its obligations hereunder and thereunder;
 - (ii) Construction Guarantor has the requisite power, authority and capacity to execute and deliver and perform this Guarantee and the Ancillary Documents to which it is a party, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee and the Ancillary Documents to which it is a party to be done, executed, delivered or performed;

- (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Guarantee or any of the Ancillary Documents to which it is party and such documents and agreements are in full force and effect as of the date hereof;
- (iv) this Guarantee and the Ancillary Documents (when executed and delivered) to which Construction Guarantor is a party, have been duly authorized, executed, and delivered by Construction Guarantor and constitute legal, valid, and binding obligations of Construction Guarantor, enforceable against Construction Guarantor in accordance with their respective terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (v) the authorization, execution, delivery and performance by Construction Guarantor of this Guarantee and the Ancillary Documents to which it is a party do not violate or conflict with, or constitute a default under:
 - (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Construction Guarantor;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) Construction Contractor is **[an indirect wholly-owned subsidiary]** of the Construction Guarantor;

[Note to Proponents: To be updated to reflect DB Co's final structure.]

- (vii) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against Construction Guarantor, at law or in equity, before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Construction Guarantor or in any impairment of its ability to perform its obligations under this Guarantee or any Ancillary Documents to which it is a party, and Construction Guarantor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment; and
- (viii) Construction Guarantor is able to meet its obligations as they generally become due.

4. NOTICES

4.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Guarantee shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Guarantee). Notices shall be served by sending the same by registered mail, facsimile or by hand, (in each case, with a copy by electronic transmission) as follows:

If to City:

City of Ottawa
110 Laurier Ave West
Ottawa, Ontario K1P 1J1
Mail code: [REDACTED]

Attention: [REDACTED]
Email: [REDACTED]

If to DB Co:

East West Connectors GP
[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

Email: [REDACTED]

If to Construction Guarantor:

[Address]

Fax No.: [•]
Attn.: [•]

With a copy to:

[Address]

Fax No.: **[•]**

Attn.: **[•]**

4.2 Facsimile

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 4.2.

4.3 Change of Address

Any party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 by prior Notice to the other parties, and such change shall be effective on the Business Day that next follows the recipient parties' receipt of such Notice unless a later effective date is given in such Notice.

4.4 Deemed Receipt of Notices

(a) Subject to Sections 4.4(b), (c) and (d):

- (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.

(b) 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 Article 4.

(c) 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.

(d) 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.

4.5 Service on City

Where any Notice is required to be served on the Guaranteed Parties, the obligation to serve such Notice shall be fulfilled by serving it on the Guaranteed Parties in accordance with the provisions of this Article 4.

5. GENERAL

5.1 Amendments

This Guarantee 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 Guarantee.

5.2 No Double Recovery.

5.3 Neither the City, nor DB Co, nor the Lenders' Agent shall be entitled to recover compensation or make a claim pursuant to this Guarantee in respect of any loss that the City, DB Co or the Lenders' Agent has incurred, or any failure to perform on the part of the Construction Contractor or any other guarantor, or in respect of any interest or enforcement costs, in each case to the extent that the City, DB Co or the Lenders' Agent has already been compensated in respect of such loss, failure, interest or enforcement costs (including through insurance proceeds, application of any security held by the City, DB Co or the Lenders' Agent towards satisfaction of the Guaranteed Obligations or from any third party).

5.4 Waiver

- (a) No waiver made or given by a party under or in connection with this Guarantee 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.

5.5 Entire Agreement

Except where provided otherwise in this Guarantee, this Guarantee, together with the Project Agreement, and the Ancillary Documents to which it is party, constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Guarantee, including the Request for Proposals.

5.6 Severability

Each provision of this Guarantee shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Guarantee 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 Guarantee. If any such provision of this Guarantee 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 Guarantee as near as possible to its original intent and effect.

5.7 Enurement

This Guarantee shall enure to the benefit of, and be binding on, the Guaranteed Parties and Construction Guarantor and their respective permitted successors and assigns. DB Co has concurrently with the execution and delivery of this Guarantee assigned to and in favour of the Lenders' Agent, and granted to the Lenders' Agent a security interest in (inter alia), all of its right, title and interest in and to this Guarantee. The Construction Guarantor acknowledges and, to the extent necessary, consents to such grant of a security interest and assignment and any further assignment or novation by the Lenders' Agent to a person who acquires any interest in the Design and Construction Contract from the Lenders' Agent. To the extent not already provided under the Lenders' Construction Contractor Direct Agreement, the Lenders' Agent shall provide notice thereof to the Guarantor. This Guarantee may not be assigned by the Construction Guarantor without the prior written consent of the Guaranteed Parties, such consent not to be unreasonably withheld.

5.8 Acknowledgement of Lenders' Construction Contractor Direct Agreement & Lender's Direct Agreement

The Construction Guarantor acknowledges the provisions of (i) the Lenders' Construction Contractor Agreement and agrees that the Lenders' Agent shall be entitled to the rights of DB Co under this Guarantee when and if the Lenders' Agent enforces the security interest referred to in Section 5.6 and (ii) the Lenders' Direct Agreement pursuant to which the City undertakes to exercise any and all rights it may have under this Guarantee only in accordance with the provisions of the Lenders' Direct Agreement.

5.9 Governing Law and Jurisdiction

- (a) This Guarantee 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) Subject to Section 5.9(c) below, both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) The Parties agree that the dispute resolution procedure provided for in Schedule 27 – Dispute Resolution Procedure to the Project Agreement shall apply to any dispute under this Guarantee.

5.10 Cumulative Remedies

Except as otherwise set forth in this Guarantee, the rights, powers and remedies of each party set forth in this Guarantee are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Guarantee or the Project Agreement, or Ancillary Documents.

5.11 Further Assurance

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Guarantee.

5.12 Costs

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Guarantee.

5.13 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Guarantee and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Guarantee shall be in English.

5.14 Proof of Authority

The Guaranteed Parties and Construction Guarantor each reserve the right to require any person executing this Guarantee on behalf of another party to provide proof, in a form acceptable to the Guaranteed Parties or Construction Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind either Guaranteed Party or Construction Guarantor, as applicable.

5.15 Counterparts

This Guarantee may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by both 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 the other party an original signed copy of this Guarantee which was so faxed.

5.16 Joint and Several

If Construction Guarantor is comprised of more than one person, then each such person shall be jointly and severally liable for the obligations and liabilities of Construction Guarantor hereunder.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Guarantee as of the date first above written.

THE CITY OF OTTAWA

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

EAST WEST CONNECTORS GP

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation

[CONSTRUCTION GUARANTOR]

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation

SCHEDULE 30

INSURANCE TRUST AGREEMENT

THIS AGREEMENT is made as of the 24th day of April, 2019

AMONG:

THE CITY OF OTTAWA

(the “City”)

AND:

[REDACTED]

(the “Lenders’ Agent”)

AND:

EAST WEST CONNECTORS GP, [REDACTED]

(“DB Co”)

AND:

[REDACTED]

(the “Account Trustee”)

WHEREAS:

- (A) The City and DB Co have entered into the Project Agreement.
- (B) The City, the Lenders’ Agent and DB Co have entered into the Lenders’ Direct Agreement.
- (C) The City, the Lenders’ Agent and DB Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

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

1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) “**Account Trustee**” has the meaning given on the first page of this Insurance Trust Agreement.
- (b) “**Appointed Representative**” has the meaning given in the Lenders’ Direct Agreement.
- (c) “**Bank**” means [REDACTED].
- (d) “**Business Day**” has the meaning given in the Project Agreement.
- (e) “**Change of Authorization Event**” has the meaning given in Section 8(a)(ii) of this Insurance Trust Agreement.
- (f) “**Change of Authorization Notice**” has the meaning given in Section 8(b)(ii) of this Insurance Trust Agreement.
- (g) “**Default Notice**” means a written notice given by the Lenders’ Agent to the Account Trustee and the City that an event of default under the Lending Agreements has occurred and is continuing.
- (h) “**Default Period**” means the period commencing on the date upon which the Account Trustee and the City receives a Default Notice and ending on the date upon which the Account Trustee and the City receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (i) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (j) “**Insurance Policies**” has the meaning given in Section 4 of this Insurance Trust Agreement.
- (k) “**Insurance Proceeds**” has the meaning given in Section 5(a) of this Insurance Trust Agreement.
- (l) “**Insurance Trust Account**” means [REDACTED].
- (m) “**Insurance Trust Agreement**” means this Insurance Trust Agreement.
- (n) “**City**” has the meaning given in the Project Agreement.
- (o) “**Lenders**” has the meaning given in the Project Agreement.
- (p) “**Lenders’ Agent**” has the meaning given on the first page of this Insurance Trust Agreement.
- (q) “**Lenders’ Direct Agreement**” means the Lenders’ Direct Agreement made on or about the date hereof between the City, DB Co and the Lenders’ Agent.
- (r) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (s) “**Notice Period**” has the meaning given in the Lenders’ Direct Agreement.

- (t) “**Order**” has the meaning given in Section 7(k) of this Insurance Trust Agreement.
- (u) “**Party**” means any of the City, DB Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of the City, DB Co, the Lenders’ Agent and the Account Trustee.
- (v) “**person**” has the meaning given in the Project Agreement.
- (w) “**Project**” has the meaning given in the Project Agreement.
- (x) “**Project Agreement**” means the project agreement made on or about the date hereof between the City and DB Co.
- (y) “**DB Co**” has the meaning given on the first page of this Insurance Agreement.
- (z) “**DB Co Event of Default**” has the meaning given in the Project Agreement.
- (aa) “**Replacement Project Agreement**” has the meaning given in the Lenders’ Direct Agreement.
- (bb) “**Replacement DB Co**” has the meaning given in the Lenders’ Direct Agreement.
- (cc) “**Step-In Notice**” has the meaning given in the Lenders’ Direct Agreement.
- (dd) “**Step-In Period**” has the meaning given in the Lenders’ Direct Agreement.
- (ee) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

2. INTERPRETATION

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

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, 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 Insurance Trust 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 Insurance Trust 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 Insurance Trust 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 Insurance Trust Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Insurance Trust 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 Insurance Trust 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 Insurance Trust 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 Ottawa, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed and time shall be of the essence hereof.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.
- (n) The City, the Lenders’ Agent and DB Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the

Lenders' Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of the Lenders' Direct Agreement and this Insurance Trust Agreement, the provisions of the Lenders' Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

3. INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of DB Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders' Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the City.
- (b) The Account Trustee shall not distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders' Agent, the City, and DB Co agree that if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration or replacement of the Confederation Line Phase 2 Project or any other assets, materials or goods necessary or desirable for the carrying out of the Works in respect of which such Insurance Proceeds have been paid;
 - (ii) the completion of the Project; or
 - (iii) indemnification for any the City loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by DB Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Lending Agreements so as to enable DB Co to carry out the Works.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if the City is entitled to indemnification under the Insurance Policies in respect of any loss incurred by the City, such related insurance proceeds are to be paid directly to the City by the Insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty it is understood and agreed that the City shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. DELIVERY OF ORIGINAL INSURANCE POLICIES

- (a) DB Co shall deliver, or cause to be delivered, to the Account Trustee originals of all property and asset related insurance policies that DB Co is required to maintain under the Project Agreement (collectively, the “Insurance Policies”), and the Account Trustee shall hold the original copy of the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.

5. INSURANCE PROCEEDS

- (a) Subject to Section 3(d), the Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, DB Co, the Lenders’ Agent or the City (the “Insurance Proceeds”) as follows:
 - (i) in the case of any property builders’ risk “All Risk” insurance, boiler and machinery insurance or property insurance policies that DB Co is required to maintain under the Project Agreement:
 - (A) if the Account Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is less than \$[REDACTED], to DB Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
 - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is equal to or greater than \$[REDACTED], to the Lenders’ Agent to reimburse DB Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
 - (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders’ Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as the City may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid.
- (b) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 5(a) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
 - (i) if the Account Trustee has not received a Default Notice, to DB Co; and

- (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, the City, may at any time or from time to time direct in writing.
- (c) Each of DB Co, the Lenders' Agent and the City shall forthwith deliver, or cause to be delivered, to the Account Trustee, any and all Insurance Proceeds it received from time to time and is not otherwise entitled to in accordance with the terms of this Insurance Trust Agreement.
- (d) The Account Trustee shall deposit to the Insurance Trust Account all amounts that are paid over to it pursuant to the Insurance Policies or otherwise by DB Co, the City or the Lenders' Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance Trust Agreement.

6. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to the City all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the City may from time to time request in writing.

7. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, the City or DB Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, the City or DB Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and

skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.

- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, the City, DB Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 7(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.
- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders or of the City or of DB Co, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 7(b).
- (f) Except as otherwise provided in Sections 7(c), 7(d) and 7(e):
 - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion,

report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and

- (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) DB Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by DB Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to DB Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or the City for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee 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 Trust Property held by it hereunder (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "Order"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, the City and DB Co.

- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, the City, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, the City, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, the City, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by the City shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the City.
- (o) Each of the Lenders' Agent and the City shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or the City, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or the City which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or the City, as applicable, pursuant to this Section 7(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other

communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or the City, as applicable, pursuant to Section 7(o).

- (q) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to DB Co and the City, or any shorter period of time as agreed to by DB Co and the City, notwithstanding the provisions of Section 7(a) of this Insurance Trust Agreement, provided that (i) the Account Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Account Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

8. LENDER'S AGENT AND CITY RIGHTS TO DIRECT

- (a) Until the first to occur of:
 - (i) the expiry of the Notice Period under the Lenders' Direct Agreement where no Step-In Notice has been delivered thereunder;
 - (ii) the expiry of the Step-In Period under the Lenders' Direct Agreement where:
 - (A) there has been no assignment to a Replacement DB Co;
 - (B) no Replacement Project Agreement has been entered into; or
 - (C) the Appointed Representative has not cured the DB Co Event of Default,

(each, a "Change of Authorization Event"), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
 - (i) the Lenders' Agent shall cease to be entitled, and the City shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
 - (ii) the Lenders' Agent and the City shall jointly provide notice to the Account Trustee (a "Change of Authorization Notice") that the City shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

9. TERMINATION

- (a) Subject to the provisions of Section 9(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
 - (i) the obligations of DB Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
 - (ii) the obligations of DB Co to the City have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon 60 days prior written notice to the other parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lenders' Agent, the City, and DB Co have entered into a replacement Insurance Trust Agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory to the Lenders' Agent, the Lenders and the City.

10. ASSIGNMENT

- (a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, the City and DB Co.

11. NOTICES

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

If to City:

City of Ottawa
110 Laurier Ave West
Ottawa, Ontario K1P 1J1
Mail code: [REDACTED]

Attention: [REDACTED]

With an electronic copy, for information purposes only, to: [REDACTED]

If to Lenders' Agent:

[REDACTED]

Fax No.: [REDACTED]

Email: [REDACTED]
Attn.: [REDACTED]

If to DB Co:

East West Connectors GP
[REDACTED]

Attn.: [REDACTED]
Email: [REDACTED]
[REDACTED]

With a copy to:

[REDACTED]

Attn.: [REDACTED]
Email: [REDACTED]

If to Account Trustee:

[REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]
Email: [REDACTED]

- (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 11(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 11(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 11(e), 11(f) and 11(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 11.
- (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.

12. AMENDMENTS

This Insurance Trust 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 Insurance Trust Agreement.

13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust 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.

14. FORCE MAJEURE

No party shall be liable to any other party, or held in breach of this Insurance Trust Agreement, if prevented, hindered, or delayed in the performance or observance of any provision contained herein by reason of acts of God, riots, terrorism, acts of war, epidemics, earthquakes, or any other similar causes beyond the affected party's reasonable control and where such failure in performance is not caused directly or indirectly by the affected party (including but not limited to, mechanical, electronic or communication interruptions, disruptions or failures, unless caused by the negligent or willful misconduct of the affected party). Performance times under this Insurance Trust Agreement shall be extended for a period of time equivalent to the time lost because of any delay that is excusable under this Section, provided that the affected party shall take commercially reasonable steps to mitigate or remedy the event giving rise to the delay.

15. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and agent.

16. ENTIRE AGREEMENT

Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Insurance Trust Agreement.

17. SEVERABILITY

Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust 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 Insurance Trust Agreement. If any such provision of this Insurance Trust 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 Insurance Trust Agreement as near as possible to its original intent and effect.

18. ENUREMENT

This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

19. GOVERNING LAW AND JURISDICTION

- (a) This Insurance Trust 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 Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) [Intentionally Deleted].

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all reasonable further documents necessary to give full effect to this Insurance Trust Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

22. COUNTERPARTS

This Insurance Trust 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 Insurance Trust Agreement which was so faxed.

[EXECUTION PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Insurance Trust Agreement as of the date first above written.

THE CITY OF OTTAWA

Per:

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation

[EXECUTION PAGE FOR INSURANCE TRUST AGREEMENT]

EAST WEST CONNECTORS GP

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

[EXECUTION PAGE FOR INSURANCE TRUST AGREEMENT]

[REDACTED]

Per: _____

Per: _____

I/We have authority to bind the corporation

[EXECUTION PAGE FOR INSURANCE TRUST AGREEMENT]

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation

[EXECUTION PAGE FOR INSURANCE TRUST AGREEMENT]

SCHEDULE 31

DB CO INFORMATION

[REDACTED]

SCHEDULE 32

[REDACTED]

**SCHEDULE 33
WORKS REPORTS**

PART 1 CURRENT PBS UPDATE Each month following Financial Close, within ten (10) Business Days following the prior month's end, DB Co shall submit a PBS Update, which shall include the following:

- (a) actual start and finish dates for completed Activities;
- (b) actual start dates, physical percent complete and remaining duration for Activities in progress;
- (c) projected sequences of Activities for future work;
- (d) revised relationships and durations for unfinished Activities, if warranted;
- (e) identify the Critical Path(s) in a Critical Path report;
- (f) show Near-Critical Path Activities; and
- (g) a PBS Update table, which shall include the following:
 - (i) added and deleted activities;
 - (ii) changes to original durations;
 - (iii) changes to constraints;
 - (iv) changes to lags;
 - (v) changes to calendar assignments; and
 - (vi) logic changes.

All changes included in the PBS Update table shall include reasoning for the change.

- 1.2 The Earned Value in a Payment Period shall match the amount eligible for claiming in the applicable Construction Period Payment Application in accordance with Schedule 21 – Construction Period Payments.
- 1.3 The PBS Update shall use the Current PBS baseline. The PBS Update shall not be used to re-baseline the Schedule. All re-baselines shall be performed in accordance with Schedule 12 – Works Scheduling Requirements.
- 1.4 The PBS Update shall remain in compliance with Table 1 of Schedule 12 – Works Scheduling Requirements.
- 1.5 DB Co shall revise the Activities within the Current PBS as appropriate to identify the current sequence of Works. If this revision causes impact on the Critical Path(s), or creates a new Critical Path(s), DB Co shall summarise the changes in the Monthly Progress Report.

- 1.6 Where Activities are divided due to changes in maximum duration, the parent activity dollar value shall be preserved across the new children.
- 1.7 The PBS Update shall at all times remain in compliance with the requirements of Schedule 12 – Works Scheduling Requirements.
- 1.8 The PBS Update shall be submitted in two electronic file formats. The first format shall be in the native file format of the software used to generate and manage the Works Schedules, which shall be the exported .XER file for the latest version of Primavera Professional Project Management (PPM). The second format shall be a word-searchable high resolution colour PDF version. Upon City's request, DB Co shall provide the details of the software and any additional software plug-ins used by DB Co, a copy of any templates, and the details for any software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable the City to replicate the Works Schedules submitted by DB Co using the native file formats provided by DB Co.

PART 2 MONTHLY PROGRESS REPORT The provisions of this Schedule 33 shall apply to the Monthly Progress Reports.

- 2.2 All information included in the Monthly Progress Reports related to Works Schedules shall be in accordance with the requirements of Schedule 12 – Works Scheduling Requirements.
- 2.3 Each month following Financial Close, DB Co shall submit to the City the Monthly Progress Report. DB Co shall submit the Monthly Progress Report within 10 Business Days following the prior month's end.
- 2.4 The Monthly Progress Report shall be divided by Division and shall contain a narrative with the following items:
 - (a) an executive summary describing the general status of the Works, including design, construction, and testing and commissioning activities;
 - (b) description of progress for each Division and the Project as a whole, including all phases of Works. Identify start date and completion dates on major areas of Works.
 - (c) For the requirements from 2.4(d) to 2.4(l), where there are no current actions or concerns, DB Co shall withhold the heading.
 - (d) Identification of tasks or activities which are causing delay, or may cause delay to, the Works Schedule. The Identification of tasks shall be grouped by:
 - (i) System Infrastructure;
 - (A) facilities;
 - (B) structures;
 - (C) Systems;
 - (D) tunnels;

- (E) guideway;
 - (F) LMSF; and
 - (G) roadways.
- (ii) progress of design and review (until complete); and
- (iii) progress and issues for:
 - (A) communications and public engagement;
 - (B) traffic and transit management (including upcoming road closures);
 - (C) progress for Utility Work;
 - (D) demolitions and removals;
 - (E) safety, security, and emergency management;
 - (F) property access;
 - (G) status update of all Permits, Licences, Approvals and Agreements;
 - (H) environmental monitoring and compliance status;
 - (I) status of warranty work;
 - (J) operations training in accordance with Schedule 15.2 Part 1 Article 17; and
 - (K) all testing and commissioning.
- (e) contemplated innovations, where applicable;
- (f) outstanding contractual decisions;
- (g) listing of any Variation Directive or Variation Confirmations that were identified or executed during the period from the submission of the previous month's Monthly Progress Report to the submission of the current Monthly Progress Report, including their status;
- (h) identification of problems and issues that are causing delay or may cause delay to the works schedule that arose during the current reporting period, outstanding problems and issues, and summary of resolved problems and issues;
- (i) identification of requested and/or required City actions for the next month;
- (j) advance notice of requested and/or required City actions for the next six months;
- (k) any other information specifically requested by the City on the progress of the applicable Works;

- (l) description and associated metrics to demonstrate compliance on Project elements as appropriate;
- (m) selected digital progress photographs that summarise key achievements of Project progress as outlined in the Monthly Progress Report narrative;
- (n) general summary of Works planned for the upcoming period;
- (o) summary quality assurance/quality control findings; and
- (p) a table of “Near-Critical Activities” for all Works Activities with a float of less than 10 Business Days.

2.5 The Monthly Progress Report shall also include, the following:

- (a) sustainability compliance status;
- (b) summarised quality assurance and quality control data, including:
 - (i) status until approval of each management plan. Once the relevant plan is reported as “Complete”, the plan can be removed from the following Monthly Progress Report; and
 - (ii) status until approval of Design Certificates and Construction Certificates. Once the relevant certificate is reported as “Complete”, the certificate can be removed from the following monthly report.
- (c) IMS metrics, including:
 - (i) results of monthly Integrated Management System reports, IMS Audit reports and information from the Non-Conformance Tracking System (as described in Schedule 11 - Integrated Management System Requirements), status of Internal IMS Audits and External IMS Audits;
 - (ii) identified Non-Conformances and deficiencies in ongoing Works as identified by the City or DB Co or both; and
 - (iii) threat and vulnerability actions (with summary).
- (d) health, safety, and environmental metrics, including:
 - (i) lost time injuries;
 - (ii) restricted work cases;
 - (iii) medical treatment injuries;
 - (iv) fatalities;
 - (v) near misses;

- (vi) all reportable incidents; and
 - (vii) accidents with no lost time.
- (e) community metrics, including:
 - (i) received and resolved complaints;
 - (ii) community outreach events; and
 - (iii) community involvement.
- (f) management staffing changes, deletions, and additions for DB Co (if applicable);
- (g) status of Proceeding At Risk Matters (if applicable);
- (h) status of all Submittals pursuant to the requirements of the Project Agreement;
- (i) Subcontract status, including:
 - (i) consultants;
 - (ii) Subcontracts awarded;
 - (iii) tenders;
 - (iv) involvement of social enterprises;
 - (v) apprenticeships;
 - (vi) labour report (average workforce); and
 - (vii) contracts terminated and for what cause.
- (j) DB Co shall use the data to develop, and provide to the City in an acceptable format, the following tabulated data on a monthly basis from the Financial Close date until the latest Final Completion:
 - (i) if applicable, the revised forecast cash flow in accordance with a Recovery Schedule;
 - (ii) the actual Earned Value (EV) as equal to the Activities at **[REDACTED]**% completion in the Current PBS;
 - (iii) the revised forecast cash flow to complete the Works in accordance with the Current PBS;
 - (iv) the overall progress expressed as a percentage of the physical work completed; and
 - (v) DB Co shall use the data to calculate the following performance indicators for inclusion in the Monthly Progress Report:

- (A) Planned Value curve from PBS-1;
 - (B) Planned Value (PV) as calculated up to the Current PBS status date;
 - (C) Earned Value (EV) as calculated up to the Current PBS status date; and
 - (D) Schedule Performance Index (SPI) = Earned Value (EV)/ Planned Value (PV), expressed as a percentage.
- (k) risk management summary, which shall include the following where applicable:
- (i) updated risk register;
 - (ii) risk response plans requiring action from the City;
 - (iii) claims;
 - (iv) liens;
 - (v) environmental issues;
 - (vi) labour;
 - (vii) outstanding disputes;
 - (viii) safety and security;
 - (ix) operational risks;
 - (x) Stakeholder risks; and
 - (xi) other risks.
- 2.6 The Monthly Progress Report shall include a variance section that contains:
- (a) the information provided in Section 1.1(g) in a tabular format; and
 - (b) a summarized narrative that provides justification for the changes.
- PART 3 MISCELLANEOUS SUBMISSIONS** Where the following deliverables are submitted separately to the Monthly Progress Report, DB Co shall submit following deliverables in accordance with the timing identified in Schedule 12:
- (a) Short Duration Schedule: Micro Works Schedule
 - (b) Short Duration Schedule: Testing and Commissioning Schedule
 - (c) Short Duration Schedule: Schedule to Complete
- 3.2 The Short Duration Schedules can be provided in either hard copy or .pdf, as agreed in discussions with the City.

- 3.3 DB Co shall prepare and submit a Testing and Commissioning schedule narrative.
- 3.4 This narrative shall be provided six months prior to commencement of testing and commissioning activities, and updated following any detailed revision to the strategy.
- 3.5 DB Co shall prepare and submit a Testing & Commissioning Schedule narrative to identify the strategy to achieve:
 - (a) East Substantial Completion;
 - (b) West Substantial Completion;
 - (c) East Final Completion; and
 - (d) West Final Completion (including completion of Remaining Works).
- 3.6 The Testing and Commissioning Schedule narrative shall contain:
 - (a) Description of the testing philosophy and process;
 - (b) Description of the interrelationships and system interfaces within the Confederation Line East Extension and Confederation Line West Extension, and between the Confederation Line East Extension and Confederation Line West Extension and the Existing Confederation Line;
 - (c) Description of testing and commissioning sequencing to achieve each Substantial Completion and Final Completion (including completion of Remaining Works); and
 - (d) Identification of potential conflicts and challenges to achieve each Substantial Completion and Final Completion (including completion of Remaining Works).

SCHEDULE 34

MOBILITY MATTERS

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PART A MOBILITY MATTERS – BUS RAPID TRANSIT LANE CLOSURES

1. DEFINITIONS

In this Schedule 34, the following definitions shall have the following meanings:

- 1.1 **“Aggregate Actual Bus Rapid Transit Lane Closures”** or **“AABRTLCL”** means the actual number of BRT lanes, measured in hours per hour type (“Peak”, “Off Peak”, “Night”), or portions thereof that are closed for each monthly period.
- 1.2 **“Aggregate Actual Bus Rapid Transit Lane Closures Cost”** or **“AABRTLCC”** means the total cost of BRT Lane Closures, calculated to be the multiplication of number of hours of AABRTLCL and the relevant Unit Rate Price.
- 1.3 **“Aggregate Bus Rapid Transit Target Lane Closures”** or **“ABRTLCL”** means the total BRT target Lane Closures, measured in hours per hour type (“Peak”, “Off Peak”, “Night”), which,
 - (a) are set forth in the BRT Lane Closure Target Letter submitted by DB Co at Commercial Close and which has been accepted by the City; and
 - (b) include and account for all requirements of Schedule 15 - Output Specifications.
- 1.4 **“Aggregate Bus Rapid Transit Target Lane Closure Cost”** or **“ABRTLCLC”** means the total cost of the target Lane Closures, calculated to be the multiplication of number of hours of ABRTLCL and the relevant Unit Rate Price, as set forth in the BRT Lane Closure Target Letter submitted by DB Co at Commercial Close and which has been accepted by the City.
- 1.5 **“BRT Lane”**, means any lane within the City of Ottawa reserved for use by buses only.
- 1.6 **“BRT Lane Closure”** means any reduction in width, obstruction, or closure of a BRT Lane to bus traffic along any segment, as a result of DB Co’s construction activities, as described below. All partial width reductions, obstructions, or closures along a segment will be considered a full Lane Closure, with the exception of localized lane shifts as described in Section 1.6 (d) below. Lane closures will be measured on a per segment, per hour basis. A maximum of one (1) BRT Lane Closure in each direction will be assessed at any given segment. **“Peak”** means Monday through Friday between the hours of 0600h – 0930h, or 1500h – 1830h. **“Night”** means the hours between 2200h – 0500h. **“Off Peak”** means all other hours not defined as “Peak” or “Night”. BRT Lane Closures will no longer be in effect once West Substantial Completion has been achieved.
 - (a) Bus rapid transit segments
 - (i) Tunney’s Pasture Station to Dominion Station (BRT-W-1);
 - (ii) Dominion Station to Sir John A MacDonald Parkway 400m west of Dominion Station (BRT-W-2);

- (iii) Sir John A MacDonald Parkway 400m west of Dominion Station to 550m north of Lincoln Fields Station (BRT-W-3); note, this segment does not have any dedicated BRT lanes;
- (iv) Sir John A MacDonald Parkway 550m north of Lincoln Fields Station to Lincoln Fields Station (BRT-W-4);
- (v) Lincoln Fields Station to Queensway Station (BRT-W-5);
 - A. Portions of this segment are common to BRT-SW-2. BRT-W-5 shall consist only of those elements that are unique to the connection between Lincoln Fields Station and Queensway Station; common elements shall be part of segment BRT-SW-2.
- (vi) Lincoln Fields Station to Iris Station (BRT-SW-2);
- (vii) Iris Station to Baseline Station (BRT-SW-1);
- (viii) Queensway Station to Pinecrest Station (BRT-W-6);
- (ix) Pinecrest Station to Bayshore Station (BRT-W-7);
- (x) Bayshore Station to Holly Acres Road (BRT-W-8);
- (xi) Holly Acres Road to Moodie LMSF (BRT-W-9)
- (xii) Blair Station to OR 174 500m east of Transitway overpass (BRT-E-1);
- (xiii) OR 174 500m east of Transitway overpass to 800m east of Montreal Road (BRT-E-2);
- (xiv) OR 174 800m east of Montreal Road to 800m east of Jeanne d’Arc (BRT-E-3); and
- (xv) OR 174 800m east of Jeanne d’Arc to Place d’Orleans Station (BRT-E-4).
- (xvi) OR 174 Place d’Orleans Station to Trim Station (BRT-E-5); note, this segment does not have any dedicated BRT lanes
- (b) DB Co shall include as a BRT Segment any BRT Lane not defined in this Schedule 34 where a need for the closure of a BRT Lane has been identified.
- (c) BRT Lane Closures will no longer be in effect for segments BRT-E-1, BRT-E-2, BRT-E-3 and BRT-E-4 once East Substantial Completion has been achieved.
- (d) Localized deviations of Transitway lanes, that do not result in an increase in travel times greater than **[REDACTED]** within a given BRT segment, and only where a minimum of one travel lane is provided in each direction of travel, shall not be considered “BRT Lane Closures” for the purposes of Schedule 34 - Mobility Matters.

- (i) The combined total increase in travel times due to localized deviations shall not exceed **[REDACTED]** simultaneously in the following combinations of BRT segments:
 - (A) BRT-W-1, BRT-W-2, BRT-W-3, BRT-W-4, BRT-W-5, BRT-W-6, BRT-W-7, BRT-W-8, BRT-W-9;
 - (B) BRT-W-1, BRT-W-2, BRT-W-3, BRT-W-4, BRT-SW-1, BRT-SW-2;
 - (C) BRT-E-1, BRT-E-2, BRT-E-3, BRT-E-4, BRT-E-5.
 - (ii) Any localized deviation causing the travel time increase to exceed **[REDACTED]** in any of the combinations of BRT segments noted in (i) above shall be considered as a BRT Lane Closure for the purposes of Schedule 34 – Mobility Matters.
 - (A) The combinations of BRT segments noted in (i) above shall not include BRT segments that have been permanently closed.
- 1.7 **“Bus Rapid Transit Lane Closure Adjustment” or “BRTLCA”** means the deduction which may be made by the City from DB Co (which amount will be deducted from the West Substantial Completion Payment) as calculated pursuant to Section 5 of this Part A of this Schedule 34.
- 1.8 **“Bus Rapid Transit Lane Closure Adjustment Offset” or “BRTLCAO”** means the amount of money that DB Co can use to reduce the BRTLCA, if applicable, as calculated pursuant to Section 5 of this Part A of this Schedule 34.
- 1.9 **“Bus Rapid Transit Lane Closure Analysis Report”** has the meaning given to it in Section 2.3.
- 1.10 **“Bus Rapid Transit Lane Closure Measurement and Verification Plan”** has the meaning given to it in Article 6.2 (k) of Part 7 – Traffic and Transit Management and Construction Access to Schedule 15-2 – Design and Construction Requirements of the Project Agreement. This plan shall outline the means by which the Independent Certifier shall perform their review of the lane closures as described in Section 3.5.
- 1.11 **“Bus Rapid Transit Lane Closure Target Letter”** means the letter set out in Appendix C.
- 1.12 **“Mobility Matters Review Meeting”** has the meaning given in Section 3.6.
- 1.13 **“Monthly Bus Rapid Transit Lane Closure Adjustment Contribution”** means the value for any given month that shall contribute to the Bus Rapid Transit Lane Closure Adjustment as calculated pursuant to Section 5.
- 1.14 **“Monthly Peak Hour BRT Lane Interruption Report”** means a report to be submitted on a monthly basis (at the same time as the BRT Lane Closure Analysis report) outlining all Peak Hour Bus Rapid Transit Interruptions and their costs, as defined in Section 6.
- 1.15 **“Peak Hour Bus Rapid Transit Interruptions”** means unplanned interruptions to the operation of the BRT during Peak periods by either an unplanned event or a planned event exceeding the

time restrictions granted. For further clarity, Peak Hour BRT Interruptions would only be for interruptions caused by the actions of DB Co or their subcontractors. Peak Hour BRT Interruptions as defined above are not included in AABRTLCC.

- 1.16 “**Unit Rate Price**” means the price for each BRT Segment of BRT Lane Closure as set in Appendix B. The prices are hourly rates, based on time of day.

2. CONTENT AND FORMAT OF THE LANE CLOSURE ANALYSIS REPORT

- 2.1 DB Co shall quantify its projected occupation of BRT Lanes on City roadways on the basis of the formulae and procedures contained in this Schedule 34. DB Co shall monitor its occupation of the BRT lanes on a monthly basis.
- 2.2 BRT Lane Closures on Highway 417 shall not be considered as part of this Schedule 34, except for Peak Hour Bus Rapid Transit Interruptions as described in Section 6.
- 2.3 DB Co shall deliver to the City a report summarizing the findings of AABRTLCC (the “**BRT Lane Closure Analysis Report**”), on a monthly basis, no later than 5 Business Days after the end of each month.
- 2.4 DB Co shall include copies of all documents required to fully support the BRT Lane Closure Analysis Report.
- 2.5 The BRT Lane Closure Analysis Report shall, at a minimum, include the following information for the relevant month:
- (a) using the template shown in Appendix A to this Schedule, a summary of target and actual BRT Lane Closures by BRT Segment, time, date and duration, indicating Peak, Off Peak or Night, including any exceptional changes forecasted for the upcoming monthly period (being changes of plus or minus [REDACTED]% in any BRT segment, for Peak, Off Peak or Night periods);
 - (b) projected BRT Lane Closures for the remaining duration of the Construction Period along with trends and potential risks associated with these BRT Lane Closures;
 - (c) accurate and precise data in support of the items set out in Sections 2.5(a) and 2.5(b);
 - (d) presentation of AABRTLCC and the AABRTLCC for the applicable month, and on a cumulative basis as of the applicable month;
 - (e) establishment of a basis for continued monitoring of BRT Lane Closures and adjustments to the AABRTLCC;
 - (f) outline of any outstanding issues from any previous BRT Lane Closure Analysis Reports and mitigating strategies to address those issues;
 - (g) adjustments to the AABRTLCC and the AABRTLCC for the applicable month, and on a cumulative basis as of the applicable month;

- (h) DB Co's estimate of the Monthly BRT Lane Closure Adjustment Contribution;
- (i) measurement and verification of BRT Lane Closures in accordance with Lane Closure Measurements and Verification Plan in Section 3.5; and
- (j) summary tables from all previous BRT Lane Closure Analysis Reports delivered by DB Co to the City.

2.6 Following the review and acceptance of the final BRT Lane Closure Analysis Report by the City Representative, the data set out in the BRT Lane Closure Analysis Report will be used by the City to determine the Monthly BRT Lane Closure Adjustment Contribution.

3. PROCEDURES FOR DETERMINING MONTHLY BRT LANE CLOSURE ADJUSTMENT CONTRIBUTIONS

- 3.1 The City shall not consider the following closures of BRT Lanes to be BRT Lane Closures for the purposes of this Schedule 34, and such closures of lanes shall not contribute to the Monthly Lane Closure Adjustment Contribution:
- a) where an existing BRT Lane width is less than the minimum lane width requirements during construction, specified Schedule 15-2 Part 7 Table 7-1.3, maintaining the lane as open for BRT operations at its existing width.
- 3.2 The City shall assess DB Co for the cost of BRT Lane Closures based on the total BRT Lane Closures that occur during Peak, Off Peak, and Night hours. All BRT Lane Closures shall be included in the calculation of the Monthly BRT Lane Closure Adjustment Contribution as provided in Section 5.
- 3.3 The ABRTTLC shall form the benchmark for calculating the BRT Lane Closure cost with respect to the AABRTLCC. The AABRTLCC shall be used to calculate the Monthly BRT Lane Closure Adjustment Contribution. The ABRTTLC shall not be amended, altered or adjusted except by the process described in Section 4.
- 3.4 [Not used]
- 3.5 The measurement and verification of BRT Lane Closure shall be performed by the Independent Certifier. No later than 30 days prior to the initial planned BRT Lane Closure within any BRT Segment, DB Co shall provide the City with a BRT Lane Closure Measurement and Verification Plan. All subsequent BRT Lane Closure Analysis Reports are to be based on this plan.
- 3.6 No later than 5 Business Days following the submission of the BRT Lane Closure Analysis Report (or as agreed to between the Parties), DB Co and the City shall convene a review meeting (the “**Mobility Matters Review Meeting**”) to be attended by the DB Co Representative and the City Representative. At the Mobility Matters Review Meeting, DB Co shall present the BRT Lane Closure Analysis Report to the City. The City and DB Co shall discuss the Aggregate Actual BRT Lane Closure for the preceding period, as well as review any proposed “localized deviations” as described in Section 1.6 (d). DB Co’s measurement and verification of BRT Lane Closure(s) shall be reviewed and confirmed by the City Representative.
- 3.7 DB Co shall assist the City Representative by providing information with respect to BRT Lane Closures and access to the BRT Lane Closure records, and by other means as may reasonably be required to confirm the information in the BRT Lane Closure Analysis Report. The City shall promptly give Notice to DB Co of the details of any disagreement with respect to all or any aspect of the BRT Lane Closure Analysis Report, and the Parties shall then seek to agree to any matters in dispute. The process shall be as follows:
- (a) AABRTLCC and AABRTLCC shall be determined at the Mobility Matters Review Meeting;

- (b) No later than 20 Business Days following each Mobility Matters Review Meeting, or within such period as may be otherwise agreed between the City Representative and the DB Co Representative, acting reasonably:
 - (i) The City shall confirm their acceptance of all or any aspect of the BRT Lane Closure Analysis Report; and
 - (ii) Subject to Section 4, DB Co and the City shall agree to any adjustments to the ABRTTLC and ABRTTLCC.
 - (c) If the City disputes DB Co's estimate of the Monthly BRT Lane Closure Adjustment Contribution in the BRT Lane Closure Analysis Report, the City shall, no later than 10 Business Days following receipt of the BRT Lane Closure Analysis Report, or within such other period as may be agreed by the City Representative and DB Co, acting reasonably, submit an account to DB Co indicating the difference in calculation between the City's estimate and DB Co's estimate of the Monthly BRT Lane Closure Adjustment Contribution. If either DB Co or the City wish to dispute any account presented pursuant this Section 3.7(c), they must do so by written Notice to the other Party no later than 10 Business Days following receipt of such account. The City Representative and the DB Co Representative shall use reasonable efforts to resolve the dispute for an additional 10 Business Days. If there is no agreement within such 10 Business Days, then either Party may refer the matter to the Dispute Resolution Procedure.
 - (d) If neither Party objects in accordance with Section 3.7(c), or, following final determination of the disputed account in accordance with Section 3.7(c), DB Co shall use the relevant Monthly BRT Lane Closure Adjustment Contribution to determine the BRT Lane Closure Adjustment. The BRT Lane Closure Adjustment shall be shown as a separate item within the invoice for the West Substantial Completion Payment.
- 3.8 For the purpose of calculating the BRT Lane Closure Adjustment, the calculation shall be completed no later than 60 days prior to the Scheduled West Substantial Completion Date (or at a later date as mutually agreed to by the City Representative and DB Co), comparing the total AABRTLCC of each BRT Segment for the entire Construction Period to the total ABRTTLCC for that same road BRT segment for the entire Construction Period. If, subsequent to this calculation being completed, there is a change to the Scheduled West Substantial Completion Date, DB Co shall amend their Lane Closure Target (in accordance with Section 4 of this Schedule 34) and the BRT Lane Closure Adjustment. For clarity, over-performance of any one BRT Segment cannot be added to underperformance of any other, with the exception of the BRT Lane Closure Adjustment Offset, as outlined in Section 5.2 below.

4. PROCESS FOR AMENDING THE AGGREGATE TARGET LANE CLOSURE AND ASSOCIATED COST

- 4.1 In all cases, changes to the ABRTTLC and ABRTTLCC must be consistent with the principles outlined in the TTMP. Changes proposed must provide reference to the TTMP or a site-specific Traffic Control Plan (as defined in Schedule 15-2 Part 7).
- 4.2 DB Co and the City shall, acting reasonably, agree to make any adjustments to the ABRTTLC, ABRTTLCC, AABRTLCC and AABRTLCC, but only in the event of changes implemented due to

an amendment of the Project Agreement, a Relief Event that is also a Delay Event pursuant to Section 32.1 (a) (xi) of the Project Agreement, or a Variation that would cause BRT Lane Closure changes. The City, at its discretion, may allow a revision to the Target Letters to reflect an agreed-upon change in Project Schedule, in the absence of an amendment of the Project Agreement or a Variation.

- 4.3 The Party requesting an amendment to the ABRTTLC in accordance with Section 4.2 shall initiate a Variation in accordance with Schedule 22 – Variation Procedure. The amended TTMP shall include a detailed analysis of the impacts to traffic and transit services, including an analysis of BRT Lane Closure requirements. The amended TTMP shall include a recommendation regarding amendments to the ABRTTLC. Both the City and DB Co shall agree to the amended ABRTTLC no later than 20 Business Days following receipt of amended TTMP. If there is no agreement within a further 10 Business Day period, then either Party may refer the matter to the Dispute Resolution Procedure.

5. CALCULATION OF MONTHLY BRT LANE CLOSURE ADJUSTMENT CONTRIBUTION AND LANE CLOSURE ADJUSTMENT

5.1 Comparing AABRTLCC to ABRTTLCC:

- (a) After the acceptance of the final BRT Lane Closure Analysis Report described in Section 2 and prior to the Scheduled West Substantial Completion Date, DB Co shall compare the total AABRTLCC for each BRT Segment to the total ABRTTLCC for each BRT Segment, and if the AABRTLCC is more than **[REDACTED]**% greater than the ABRTTLCC, for any BRT Segment, then DB Co shall calculate the Monthly BRT Lane Closure Adjustment Contribution set out in Section 5.3 and deduct the amount of the BRT Lane Closure Adjustment from the West Substantial Completion Payment to be made in accordance with the Project Agreement. For clarity, the Lane Closure Adjustment deduction from the West Substantial Completion Payment shall not be subject to the limitations set out in Article 47.4 of the Project Agreement.
- (b) If the AABRTLCC is greater than **[REDACTED]**% of the ABRTTLCC for any monthly period for any BRT Segment, then DB Co shall submit a detailed remediation plan no later than 10 Business Days following the end of the month to explain how it will reduce the AABRTLCC for the BRT Segment in subsequent period(s), such that the variance will not exceed the **[REDACTED]**% for the subsequent periods. DB Co shall present progress and achievements of the remediation plan at subsequent Mobility Matters Review Meeting(s).

5.2 The formula to calculate the BRT Lane Closure Adjustment Offset is set out in this Section 5.2.

- (a) For the purposes of Section 5.2 (b), in respect of all BRT Segments for all months:

A = the summation of the AABRTLCC for all segments and all months

T = the summation of the ABRTTLCC for all segments and all months

- (b) The BRT Lane Closure Adjustment Offset for the entire project shall be calculated as follows:

- (i) $BRTLCAO = \$[REDACTED]$;
- (ii) $BRTLCAO$ must be greater than or equal to $\$[REDACTED]$;
- (iii) If $A > T$, then $BRTLCAO$ is $\$[REDACTED]$.

5.3 The formulae to calculate the Monthly BRT Lane Closure Adjustment Contribution are set out in this Section 5.3.

(a) For the purposes of Section 5.3(b), in respect of each BRT Segment:

$A =$ the AABRTLCC for each BRT Segment in the relevant month

$T =$ the ABRTTLCC for each BRT Segment in the relevant month

(b) In respect of any given month during the period leading up to West Substantial Completion for each BRT Segment:

(i) If $A > [REDACTED]T$, then Monthly BRT Lane Closure Adjustment Contribution = $[REDACTED]$;

(ii) If $A < T$, then Monthly BRT Lane Closure Adjustment Contribution = $[REDACTED]$

(iii) If $[REDACTED]T \geq A \geq T$, then Monthly BRT Lane Closure Adjustment Contribution = $\$[REDACTED]$

(iv) if the sum of all Monthly BRT Lane Closure Adjustment Contributions in each month prior to West Substantial Completion $< \$[REDACTED]$, then BRT Lane Closure Adjustment for that BRT Segment = $\$[REDACTED]$; and

(v) if the sum of all Monthly BRT Lane Closure Adjustment Contributions in each month prior to West Substantial Completion $> \$[REDACTED]$, then BRT Lane Closure Adjustment for that BRT Segment = the sum of all Monthly BRT Lane Closure Adjustment Contributions in each month prior to West Substantial Completion.

(c) The BRT Lane Closure Adjustment for the project shall be equal to the sum of the BRT Lane Closure Adjustment for each segment, minus the BRT Lane Closure Adjustment Offset. If the calculated BRT Lane Closure Adjustment for the project is less than $\$[REDACTED]$, then it shall equal $\$[REDACTED]$.

6. PEAK HOUR BRT LANE INTERRUPTIONS

6.1 The City will assess DB Co for Peak Hour BRT Lane Interruptions at a cost of $\$[REDACTED]$ per minute.

6.2 Any time assessed in the cost associated with Peak Hour BRT Lane Interruptions will not be included in calculations of BRT Lane Closure Adjustments.

6.3 The City shall assess DB Co for the cost of Peak Hour BRT Lane Interruptions. All Peak Hour BRT Lane Interruptions shall be formulated into a Monthly Peak Hour BRT Lane Interruption Report to be submitted by DB Co with the BRT Lane Closure Analysis Report.

6.4 Peak Hour BRT Lane Interruptions shall not be applicable after a BRT segment has been permanently closed.

6.5 DB Co shall calculate the cost of Peak Hour BRT Interruptions and deduct this amount from the Construction Period Payment or West Substantial Completion Payment, as applicable, following the most recent Monthly Peak Hour BRT Lane Interruption report in accordance with Project Agreement Article 4 – Payment, and Schedule 21 – Construction Period Payments.

7. BRT CLOSURES FOR CONVERSION TO LRT

7.1 When the full BRT Lane Closures occurs for conversion to LRT, only two (2) BRT Lane Closures (one in each direction) will be applied for each segment that is closed.

8. APPLICATION

8.1 The Lane Closure provisions of this Schedule 34 will no longer be in effect once West Substantial Completion has been achieved.

PART B MOBILITY MATTERS – LANE CLOSURES

1. DEFINITIONS

In this Schedule 34, the following definitions shall have the following meanings:

- 1.1 “**Aggregate Actual Lane Closures**” or “**AALC**” means the actual number of lanes, or portions thereof that are closed for each monthly period, measured in hours per hour type (“Peak”, “Off Peak”, “Night”).
- 1.2 “**Aggregate Actual Lane Closures Cost**” or “**AALCC**” means the total cost of Lane Closures.
- 1.3 “**Aggregate Target Lane Closures**” or “**ATLC**” means the total target Lane Closures, measured in hours per hour type (“Peak”, “Off Peak”, “Night”), which,
- (a) are set forth in the Lane Closure Target Letter; and
 - (b) include and account for all requirements of Schedule 15 - Output Specifications.
- 1.4 “**Aggregate Target Lane Closure Cost**” or “**ATLCC**” means the total cost of the target Lane Closures, as set forth in the Lane Closure Target Letter submitted by DB Co at Commercial Close and which has been accepted by the City.
- 1.5 “**Arterial**” has the meaning given in the City of Ottawa’s Road Classification System (City of Ottawa).
- 1.6 “**Blocks**” are the physical units upon which Lane Closure costs are to be calculated for the purposes of this Schedule 34, and
- (a) for any streets proposed to be occupied by DB Co are delineated between two adjacent intersections, irrespective of whether the intersections are signalized or unsignalized.
 - (b) a block will start and end at the start and end of the intersections on either side of it, but not include the intersections themselves.
 - (c) On OR 174, blocks are delineated between adjacent interchanges, at the mid-point of the road crossing OR 174, and shall include mainline lanes and ramps.
- For clarity, a laneway opening shall not constitute an intersection for the purposes of this Section 1.6.
- 1.7 “**Collector**” has the meaning given in the City of Ottawa’s Road Classification System (City of Ottawa).
- 1.8 “**Federal Roadways**” means roadways under the ownership and operation of the Federal Government or the National Capital Commission).
- 1.9 “**High Cost Measures**” means, in respect of a monthly period, discrete Lane Closure saving measures that incur capital expenditure greater than [REDACTED]% of the discrete Lane Closure savings cost.

1.11 **“Lane Closure” or “Lane Closures”** means any reduction in width, obstruction, or closure of a lane in any Block, as a result of the Works, to bus or vehicular traffic or parking and loading between two intersecting streets, including tapers, with the exception of where an equivalent facility to the one that has been closed has been provided, in accordance with Section 1.11 (g) below. All partial width reductions, obstructions, or closures within any Block will be considered as a full Lane Closure. Lane Closures will be measured on a per Block, per hour basis. **“Peak”** means Monday through Friday between the hours of 0630h – 0930h, or 1500h – 1830h. **“Night”** means the hours between 2200h – 0500h. **“Off Peak”** means all other hours not defined as “Peak” or “Night”. Travel lanes shall be classified as Arterial, Major Collector, Collector, Local, City Freeway (OR 174), or Federal, based on the City’s Transportation Master Plan, or if they are federally owned. The following rules apply to Lane Closures:

- (a) Lane Closures will no longer be in effect once East or West Substantial Completion (as applicable) has been achieved, or once closed lanes have been reopened in their ultimate configuration;
- (b) lanes that have limited openings such as “local traffic only” shall be considered not available for use for the purpose of this Section 1.11;
- (c) any reduction in width, obstruction, or closure of a lane, taking place before West Substantial Completion, that is solely as a result of a Utility Company carrying out activities with respect to its own new Utility Company Infrastructure following the handback of the applicable new Utility Company Infrastructure to such Utility Company shall be deemed not to constitute a Lane Closure or contribute to any Lane Closure for the purposes of this Schedule 34;
- (d) any reduction in width, obstruction, or closure of a lane that is solely the result of self-performed Utility Work by a Category 1 Utility Company shall not contribute to any Lane Closure for the purposes of this Schedule 34;
- (e) reduction in width, obstruction, or closure of an on-street bicycle lane shall not constitute a “Lane Closure” for the purposes of this Schedule 34, provided that the traffic lane adjacent to the closed bicycle lane meets the required width for a “shared lane” as outlined in Schedule 15-2 Part 7 Table 7-1.3;
- (f) Lane Closures shall not apply to open travel lanes that are reduced in width from their existing width where such reduced widths are specifically prescribed in Schedule 15-2 Part 2 Article 6 or Schedule 15-2 Part 7;
- (g) where the traffic management associated with a lane closure provides an equivalent facility to the one closed with respect to a) vehicular level of service, b) truck level of service, c) transit level of service, d) lane width, e) posted speed, and f) on-road cycling facilities, such a lane closure shall not be considered a “Lane Closure” for the purposes of this Schedule 34; and
- (h) where a roadway’s ultimate configuration has fewer total lanes than its configuration at Financial Close, the affected road segments shall consider the difference in number of lanes as “closed” until East or West Substantial Completion (as applicable), even if the roadway’s ultimate configuration is achieved prior to East or West Substantial Completion.

- 1.12 “**Lane Closure Adjustment**” or “**LCA**” means the deduction which may be made by The City from DB Co (which amount will be deducted from the West Substantial Completion Payment) as calculated pursuant to Section 5.
- 1.13 “**Lane Closure Analysis Report**” has the meaning given to it in Section 2.3.
- 1.14 “**Lane Closure Measurement and Verification Plan**” has the meaning given to it in Section 6.2 (j) of Part 7 – Traffic and Transit Management and Construction Access to Schedule 15-2 – Design and Construction Requirements. This plan shall outline the means by which the Independent Certifier shall perform their review of the lane closures as described in Section 3.6.
- 1.15 “**Lane Closure Target Letter**” means the letter set out in Appendix F.
- 1.16 “**Left Turn Lane Closure**” means any reduction in width, obstruction, or closure of an exclusive left turn lane within the Road Sections, of Arterial or Collector road classification, at the Site, such that the lane is not available for use by the public due to the Works. For clarity, lanes that have limited openings such as “local traffic only” shall be considered not available for use by the public for the purposes of this Section 1.14.
- 1.17 “**Local**” has the meaning given in City of Ottawa’s Road Classification System (City of Ottawa).
- 1.18 “**Major Collector**” has the meaning given in the City of Ottawa’s Road Classification System (City of Ottawa).
- 1.19 “**Mobility Matters Review Meeting**” has the meaning given in Section 3.7.
- 1.20 “**Monthly Lane Closure Adjustment Contribution**” means the value for any given month that shall contribute to the Lane Closure Adjustment as calculated pursuant to Section 5.
- 1.21 “**Monthly Peak Hour Lane Interruption Report**” means a report to be submitted on a monthly basis (at the same time as the Lane Closure Analysis report) outlining all Peak Hour Lane Interruptions and their costs, as defined in Section 6.
- 1.22 “**Peak Hour Lane Interruptions**” means unplanned interruptions to the operation of roadway lanes, excluding BRT lanes, during Peak periods by either an unplanned event or a planned event exceeding the time restrictions granted. For further clarity, Peak Hour Lane Interruptions would only be for interruptions caused by the actions of DB Co or their subcontractors. Peak Hour Lane Interruptions as defined above are not included in AALC.
- 1.23 “**Right Turn Lane Closure**” means any reduction in width, obstruction, or closure of an exclusive right turn lane within the Road Sections, of Arterial or Collector road classification, at the Site, such that it is not available for use by the public due to the Works. For clarity, lanes that have limited openings such as “local traffic only” shall be considered “not available for use by the public” for the purposes of this Section 1.23.
- 1.24 “**Road Sections**” means the defined portions of the Site where Works are to be undertaken in which the Unit Rate Prices for Lane Closure are to be applied for any Lane Closure, Left Turn Lane Closure or Right Turn Lane Closure. Each of the Road Sections has a Unit Price structure for Lane Closure costs per Block, defined in Appendix E to this Schedule, and based on the

City's roadway classification. Any portion of an individual roadway requiring Lane Closures shall be considered to be a Road Section. A Road Section can be a single isolated block, or a continuous stretch of adjacent blocks having the same roadway classification. All Road Sections are to be identified in the monthly Lane Closure Analysis Reports.

1.25 “**Traffic and Transit Management Plan**” or “**TTMP**” means the plan for the manner in which traffic and transit will be managed during construction activities and the method used to determine the magnitude of the impacts.

1.26 “**Unit Rate Price**” for each Lane Closure, Left Turn Lane Closure or Right Turn Lane Closure means the prices for each Block of each Road Section, and for each type of lane, as set out in Appendix E. The prices are hourly rates.

2. CONTENT AND FORMAT OF THE LANE CLOSURE ANALYSIS REPORT

2.1 DB Co shall quantify its projected occupation of lanes on City roadways on the basis of the formulae and procedures contained in this Schedule 34. DB Co shall monitor its occupation of the lanes on a monthly basis.

2.2 Lane closures on Highway 417 and its interchange ramps shall not be considered as part of this Schedule 34.

2.3 DB Co shall deliver to the City a report summarizing the findings of AALC (the “**Lane Closure Analysis Report**”), on a monthly basis, no later than 5 Business Days after the end of each month.

2.4 DB Co shall include copies of all documents required to fully support the Lane Closure Analysis Report.

2.5 The Lane Closure Analysis Report shall, at a minimum, include the following information for the relevant month:

- (a) using the template shown in Appendix D to this Schedule, a summary of target and actual Lane Closures by Road Section and breakdown by road classification (Arterial, Major Collector, Collector, Local), location, time, date and duration, indicating Peak, Off Peak or Night, including any exceptional changes forecasted for the upcoming monthly period (being changes of plus or minus [REDACTED]% in any Road Section, for Peak, Off Peak or Night periods);
- (b) projected Lane Closures for the remaining duration of the Construction Period along with trends and potential risks associated with these Lane Closures;
- (c) accurate and precise data in support of the items set out in Sections 2.5(a) and 2.5(b);
- (d) presentation of AALC and the AALCC for the applicable month, and on a cumulative basis as of the applicable month;
- (e) establishment of a basis for continued monitoring of Lane Closures and adjustments to the AALC;

- (f) outline of any outstanding issues from any previous Lane Closure Analysis Reports and mitigating strategies to address those issues;
- (g) adjustments to the ATLC and the ATLCC for the applicable month, and on a cumulative basis as of the applicable month;
- (h) DB Co's estimate of the Monthly Lane Closure Adjustment Contribution;
- (i) measurement and verification of Lane Closures in accordance with Lane Closure Measurements and Verification Plan in Section 3.6; and
- (j) summary tables from all previous Lane Closure Analysis Reports delivered by DB Co to the City.

2.6 Following the review and acceptance of the final Lane Closure Analysis Report by the City Representative, the data set out in the Lane Closure Analysis Report will be used by the City to determine the Monthly Lane Closure Adjustment Contribution.

3. PROCEDURES FOR DETERMINING MONTHLY LANE CLOSURE ADJUSTMENT CONTRIBUTIONS

- 3.1 The City shall not consider the following closures of lanes to be Lane Closures for the purposes of this Schedule 34, and such closures of lanes shall not contribute to the Monthly Lane Closure Adjustment Contribution:
- a) where an existing lane width is less than the minimum lane width requirements during construction, specified in Schedule 15-2 Part 7 Table 7-1.3, maintaining the lane as open for traffic operations at its existing width.
- 3.2 DB Co shall not use lane configurations that will remain after West Substantial Completion to determine Lane Closures. For clarity, the lane configuration of each roadway as of Financial Close shall be the configuration used to calculate Lane Closures.
- 3.3 The City shall assess DB Co for the cost of Lane Closures based on the total Lane Closures that occur during Peak, Off Peak, and Night hours. All Lane Closures shall be included in the calculation of the Monthly Lane Closure Adjustment Contribution as provided in Section 5.
- 3.4 The ATLC shall form the benchmark for calculating the Lane Closure cost with respect to the AALC. The AALCC shall be used to calculate the Monthly Lane Closure Adjustment Contribution. The Lane Closure Target shall not be amended, altered or adjusted except by the process described in Section 4.
- 3.5 [Not used]
- 3.6 The measurement and verification of Lane Closure shall be performed by the Independent Certifier. No later than 30 days prior to the initial Lane Closure within any Road Section, DB Co shall provide the City with a Lane Closure Measurement and Verification Plan. All subsequent Lane Closure Analysis Reports are to be based on this plan.

- 3.7 No later than 5 Business Days following the submission of the Lane Closure Analysis Report (or as agreed to between the Parties), DB Co and the City shall convene a review meeting (the “**Mobility Matters Review Meeting**”) to be attended by the DB Co Representative and the City Representative. At the Mobility Matters Review Meeting, DB Co shall present the Lane Closure Analysis Report to the City. The City and DB Co shall discuss the Aggregate Actual Lane Closure for the preceding period, as well as review any proposed “equivalent facilities” as described in Section 1.11(g). DB Co’s measurement and verification of Lane Closure(s) shall be reviewed and confirmed by the City Representative.
- 3.8 DB Co shall assist the City Representative by providing information with respect to Lane Closures and access to the Lane Closure records, and by other means as may reasonably be required to confirm the information in the Lane Closure Analysis Report. The City shall promptly give Notice to DB Co of the details of any disagreement with respect to all or any aspect of the Lane Closure Analysis Report, and the Parties shall then seek to agree to any matters in dispute. The process shall be as follows:
- (a) AALC and AALCC shall be determined at the Mobility Matters Review Meeting;
 - (b) No later than 20 Business Days following each Mobility Matters Review Meeting, or within such period as may be otherwise agreed between the City Representative and the DB Co Representative, acting reasonably:
 - (i) The City shall confirm their acceptance of all or any aspect of the Lane Closure Analysis Report; and
 - (ii) Subject to Section 4, DB Co and the City shall agree to any adjustments to the ATLC and ATLCC.
 - (c) If the City disputes DB Co’s estimate of the Monthly Lane Closure Adjustment Contribution in the Lane Closure Analysis Report, the City shall, no later than 10 Business Days following receipt of the Lane Closure Analysis Report, or within such other period as may be agreed by the City Representative and DB Co, acting reasonably, submit an account to DB Co indicating the difference in calculation between the City’s estimate and DB Co’s estimate of the Monthly Lane Closure Adjustment Contribution. If either DB Co or the City wish to dispute any account presented pursuant this Section 3.8(c), they must do so by written Notice to the other Party no later than 10 Business Days following receipt of such account. The City Representative and the DB Co Representative shall use reasonable efforts to resolve the dispute for an additional 10 Business Days. If there is no agreement within such 10 Business Days, then either Party may refer the matter to the Dispute Resolution Procedure;
 - (d) If neither Party objects in accordance with Section 3.8(c), or, following final determination of the disputed account in accordance with Section 3.8(c), DB Co shall use the relevant Monthly Lane Closure Adjustment Contribution to determine the Lane Closure Adjustment. The Lane Closure Adjustment shall be shown as a separate item within the invoice for the West Substantial Completion Payment;
- 3.9 For the purpose of calculating the Lane Closure Adjustment, the calculation shall be completed no later than 60 days prior to the Scheduled West Substantial Completion Date (or at a later date as mutually agreed to by the City Representative and DB Co), comparing the total AALCC of

each Road Section for the entire Construction Period to the total ALTCC for that same Road Section for the entire Construction Period. If, subsequent to this calculation being completed, there is a change to the Scheduled West Substantial Completion Date, DB Co shall amend their Lane Closure Target (in accordance with Section 4) and the Lane Closure Adjustment. For clarity, over-performance of any one Road Section cannot be added to underperformance of any other.

4. PROCESS FOR AMENDING THE AGGREGATE TARGET LANE CLOSURE AND ASSOCIATED COST

- 4.1 In all cases, changes to the ATLC and ATLCC must be consistent with the principles outlined in the TTMP. Changes proposed must provide reference to the TTMP or a site-specific Traffic Control Plan (as defined in Schedule 15-2 Part 7).
- 4.2 DB Co and the City shall, acting reasonably, agree to make any adjustments to the ATLC, ATLCC, AALC and AALCC, but only in the event of changes implemented due to an amendment of the Project Agreement, a Relief Event that is also a Delay Event pursuant to Section 32.1 (a) (xi) of the Project Agreement, or a Variation that would cause Lane Closure changes. The City, at its discretion, may allow a revision to the Target Letters to reflect an agreed-upon change in Project Schedule, in the absence of an amendment of the Project Agreement or a Variation.
- 4.3 The Party requesting an amendment to the ATLC in accordance with Section 4.2 shall initiate a Variation in accordance with Schedule 22 – Variation Procedure. The amended TTMP shall include a detailed analysis of the impacts to traffic and transit services, including an analysis of Lane Closure requirements. The amended TTMP shall include a recommendation regarding amendments to the ATLC. Both the City and DB Co shall agree to the amended ATLC no later than 20 Business Days following receipt of amended TTMP. If there is no agreement within a further 10 Business Day period, then either Party may refer the matter to the Dispute Resolution Procedure.

5. CALCULATION OF MONTHLY LANE CLOSURE ADJUSTMENT CONTRIBUTION AND LANE CLOSURE ADJUSTMENT

- 5.1 Comparing Aggregate Actual Lane Closures Costs to Aggregate Target Lane Closure Costs:
 - (a) After the acceptance of the final Lane Closure Analysis Report described in Section 2 and prior to the West Scheduled Substantial Completion Date, DB Co shall compare the total AALCC for each Road Section to the total ATLCC for each Road Section, and if the AALCC is more than [REDACTED]% greater than the ATLCC, for any Road Section, then DB Co shall calculate the Monthly Lane Closure Adjustment Contribution set out in Section 5.2 and deduct the amount of the Lane Closure Adjustment from the West Substantial Completion Payment to be made in accordance with the Project Agreement. For clarity, the Lane Closure Adjustment deduction from the West Substantial Completion Payment shall not be subject to the limitations set out in Article 47.4 of the Project Agreement;
 - (b) If the AALCC is greater than [REDACTED]% of the ATLCC for any monthly period for any Road Section, then DB Co shall submit a detailed remediation plan no later than

10 Business Days following the end of the month to explain how it will reduce the AALCC for the Road Section in subsequent period(s), such that the variance will not exceed the [REDACTED]% for the subsequent periods. DB Co shall present progress and achievements of the remediation plan at subsequent Mobility Matters Review Meeting(s).

5.2 The formulae to calculate the Monthly Lane Closure Adjustment Contribution are set out in this Section 5.2.

(a) For the purposes of Section 5.3(b), in respect of each Road Section:

A = the AALCC for each Road Section in the relevant month

T = the ATLCC for each Road Section in the relevant month

(b) In respect of any given month during the period leading up to West Substantial Completion for each Road Section:

(i) If $A > [\text{REDACTED}]T$, then Monthly Lane Closure Adjustment Contribution = $(A - [\text{REDACTED}])$;

(ii) If $A < T$, then Monthly Lane Closure Adjustment Contribution = $[\text{REDACTED}]$

(iii) If $[\text{REDACTED}]T \geq A \geq T$, then Monthly Lane Closure Adjustment Contribution = $[\text{REDACTED}]$

(iv) if the sum of all Monthly Lane Closure Adjustment Contributions in each month prior to West Substantial Completion $< [\text{REDACTED}]$, then Lane Closure Adjustment for that Road Section = $[\text{REDACTED}]$; and

(v) if the sum of all Monthly Lane Closure Adjustment Contributions in each month prior to West Substantial Completion $> [\text{REDACTED}]$, then Lane Closure Adjustment for that Road Section = the sum of all Monthly Lane Closure Adjustment Contributions in each month prior to West Substantial Completion.

6. PEAK HOUR LANE INTERRUPTIONS

6.1 The City will assess DB Co for Peak Hour Lane Interruptions in accordance with Table 6.1 for the following non-performance measures per lane that is not open.

Table 6.1 - Peak Hour Lane Interruption Costs

Road Classification* INCLUDING Transit Routes and Lanes	Initial value to be assessed if lane is not open as required	Additional value to be assessed at the end of each additional 10-minute period that the lane is not open.
Federal Roadways	\$(REDACTED)	\$(REDACTED)
Federal Roadways with Transit	\$(REDACTED)	\$(REDACTED)
[Intentionally deleted]	[Intentionally deleted]	[Intentionally deleted]
[Intentionally deleted]	[Intentionally deleted]	[Intentionally deleted]
Arterial	\$(REDACTED)	\$(REDACTED)
Arterial with Transit	\$(REDACTED)	\$(REDACTED)
Major Collector	\$(REDACTED)	\$(REDACTED)
Major Collector with Transit	\$(REDACTED)	\$(REDACTED)
Collector	\$(REDACTED)	\$(REDACTED)
Collector with Transit	\$(REDACTED)	\$(REDACTED)
City Freeway (OR 174)	\$(REDACTED)	\$(REDACTED)

* See the following link for City Road Classifications: <http://ottawa.ca/en/city-hall/planning-and-development/official-plan-and-master-plans/official-plan/volume-1-official-11>

6.2 Any time assessed in the cost associated with Peak Hour Lane Interruptions will not be included in calculations of Lane Closure Adjustments.

6.3 The City shall assess DB Co for the cost of Peak Hour Lane Interruptions. All Peak Hour Lane Interruptions shall be formulated into a Monthly Peak Hour Lane Interruption Report to be submitted by DB Co with the Lane Closure Analysis Report.

6.4 DB Co shall calculate the cost of Peak Hour Lane Interruptions and deduct this amount from the Construction Period Payment or West Substantial Completion Payment, as applicable, following the most recent Monthly Peak Hour Lane Interruption Report in accordance with Project Agreement Article 4 – Payment, and Schedule 21 – Construction Period Payments.

7. APPLICATION

7.1 The Lane Closure provisions of this Schedule 34 will no longer be in effect once West Substantial Completion has been achieved.

APPENDIX A

BRT LANE CLOSURE REPORT SUBMITTAL REQUIREMENTS

Total BRT Lane Closure Summary	Lane Closure Unit Rate	BRT Lane Closure Target		Actual BRT Lane Closures		Percent Variance between columns v and iii of this table	Monthly BRT Lane Closure Adjustment Contribution
	Unit Rate based on roadway classification and time of day	Number of Target Closures (hours)	Cost of BRT Lane Closure for monthly period (calculated based on number of closures multiplied by Unit Price Rate, multiplied by number of hours)	Usage	Cost of BRT Lane Closures for monthly period (calculated based on number of closures multiplied by Unit Price Rate, multiplied by number of hours)		
Column reference	i	ii	iii	iv	v	vi	vii
BRT Segment BRT-W-1 Peak	\$(REDACTED)						
BRT Segment BRT-W-1 Off Peak	\$(REDACTED)						
BRT Segment BRT-W-1 Night	\$(REDACTED)						
Sub-total: BRT Segment BRT-W-1							
BRT Segment BRT-W2 Peak	\$(REDACTED)						

BRT Segment BRT-W-2 Off Peak	\$(REDACTED)						
BRT Segment BRT-W-2 Night	\$(REDACTED)						
<i>Subtotal: BRT Segment BRT-W-2</i>							
BRT Segment BRT-W-4 Peak	\$(REDACTED)						
BRT Segment BRT-W-4 Off Peak	\$(REDACTED)						
BRT Segment BRT-W-4 Night	\$(REDACTED)						
<i>Subtotal: BRT Segment BRT-W-4</i>							
BRT Segment BRT-SW-1 Peak	\$(REDACTED)						
BRT Segment BRT-SW-1 Off Peak	\$(REDACTED)						
BRT Segment BRT-SW-1 Night	\$(REDACTED)						
<i>Subtotal:-BRT Segment BRT-SW-1</i>							
BRT Segment BRT-SW-2 Peak	\$(REDACTED)						
BRT Segment BRT-SW-2 Off Peak	\$(REDACTED)						
BRT Segment BRT-SW-2 Night	\$(REDACTED)						

Subtotal: BRT Segment BRT-SW-2							
BRT Segment BRT- W-5 Peak	\$(REDACTED)						
BRT Segment BRT- W-5 Off Peak	\$(REDACTED)						
BRT Segment BRT- W-5 Night	\$(REDACTED)						
Subtotal: BRT Segment BRT-W-5							
BRT Segment BRT- W-6 Peak	\$(REDACTED)						
BRT Segment BRT- W-6 Off Peak	\$(REDACTED)						
BRT Segment BRT- W-6 Night	\$(REDACTED)						
Subtotal: BRT Segment BRT-W-6							
BRT Segment BRT- W-7 Peak	\$(REDACTED)						
BRT Segment BRT- W-7 Off Peak	\$(REDACTED)						
BRT Segment BRT- W-7 Night	\$(REDACTED)						
Subtotal: BRT Segment BRT-W-7							
BRT Segment BRT- W-8 Peak	\$(REDACTED)						

BRT Segment BRT-W-8 Off Peak	\$(REDACTED)						
BRT Segment BRT-W-8 Night	\$(REDACTED)						
<i>Subtotal: BRT Segment BRT-W-8</i>							
BRT Segment BRT-W-9 Peak	\$(REDACTED)						
BRT Segment BRT-W-9 Off Peak	\$(REDACTED)						
BRT Segment BRT-W-9 Night	\$(REDACTED)						
<i>Subtotal: BRT Segment BRT-W-9</i>							
BRT Segment BRT-E-1 Peak	\$(REDACTED)						
BRT Segment BRT-E-1 Off Peak	\$(REDACTED)						
BRT Segment BRT-E-1 Night	\$(REDACTED)						
<i>Subtotal: BRT Segment BRT-E-1</i>							
BRT Segment BRT-E-2 Peak	\$(REDACTED)						
BRT Segment BRT-E-2 Off Peak	\$(REDACTED)						
BRT Segment BRT-E-2 Night	\$(REDACTED)						

<i>Subtotal: BRT Segment BRT-E-2</i>							
BRT Segment BRT-E-3 Peak	\$(REDACTED)						
BRT Segment BRT-E-3 Off Peak	\$(REDACTED)						
BRT Segment BRT-E-3 Night	\$(REDACTED)						
<i>Subtotal: BRT Segment BRT-E-3</i>							
BRT Segment BRT-E-4 Peak	\$(REDACTED)						
BRT Segment BRT-E-4 Off Peak	\$(REDACTED)						
BRT Segment BRT-E-4 Night	\$(REDACTED)						
<i>Subtotal: BRT Segment BRT-E-4</i>							
Substantial Completion Weekday Peak							
Substantial Completion Weekday Off Peak							
Substantial Completion Night/Weekend							
<i>Total: Substantial</i>							

Completion							

APPENDIX B

UNIT RATES FOR EACH BRT LANE CLOSURE, LEFT TURN LANE CLOSURE AND RIGHT TURN LANE CLOSURE

1. UNIT RATE PRICES FOR BRT LANE CLOSURES (Price per hour per Block for BRT lanes in segments not identified in Appendix A)

	Peak *	Off Peak **	Night ***
BRT Lane Closure Cost	[REDACTED]	[REDACTED]	[REDACTED]

* As defined in Part A - Section 1.6

** As defined in Part A - Section 1.6

*** As defined in Part A - Section 1.6

APPENDIX C
BRT LANE CLOSURE TARGET LETTER

[See Attached]

APPENDIX D

LANE CLOSURE REPORT SUBMITTAL REQUIREMENTS

Total Lane Closure Summary	Lane Closure Unit Rate	Lane Closure Target		Actual Lane Closures		Percent Variance between columns iv and ii of this table	Monthly Lane Closure Adjustment Contribution
	Unit Rate based on roadway classification and time of day	Number of Target Closures	Cost of Lane Closure for monthly period (calculated based on number of closures multiplied by Unit Price Rate, multiplied by number of hours)	Usage	Cost of Lane Closures for monthly period (calculated based on number of closures multiplied by Unit Price Rate, multiplied by number of hours)		
Column reference	i	ii	iii	iv	v	vi	vii
Road Section 1 Peak							
Road Section 1 Off Peak							
Road Section 1 Night							
<i>Sub-total: Road Section 1</i>							
Road Section 2 Peak							
Road Section 2 Off Peak							

Road Section 2 Night							
<i>Subtotal: Road Section 2</i>							
Road Section xx Peak							
Road Section xx Off Peak							
Road Section xx Night							
<i>Subtotal:-Road Section xx</i>							
Substantial Completion Weekday Peak							
Substantial Completion Weekday Off Peak							
Substantial Completion Night/Weekend							
<i>Total: Substantial Completion</i>							

APPENDIX E

UNIT RATES FOR EACH LANE CLOSURE, LEFT TURN LANE CLOSURE AND RIGHT TURN LANE CLOSURE

1. UNIT RATE PRICES FOR LANE CLOSURES (Price per Hour per Block)

	Peak *	Off Peak **	Night ***
Arterial	[REDACTED]	[REDACTED]	[REDACTED]
Major Collector	[REDACTED]	[REDACTED]	[REDACTED]
Collector	[REDACTED]	[REDACTED]	[REDACTED]
Local	[REDACTED]	[REDACTED]	[REDACTED]
City Freeway	[REDACTED]	[REDACTED]	[REDACTED]
Federal Roadways	[REDACTED]	[REDACTED]	[REDACTED]

* As defined in Part B - Section 1.11

** As defined in Part B - Section 1.11

*** As defined in Part B - Section 1.11

APPENDIX F
LANE CLOSURE TARGET LETTER

[See Attached]

SCHEDULE 35**PERMITS, LICENCES, APPROVALS AND AGREEMENTS**

- a) The Permits, Licences, Approvals and Agreements may include, but are not limited to those included in the tables below.
- b) The following Responsibility Tables will be updated by addendum, if applicable, upon receipt of further information.
- c) The following Responsibility Tables are for the purpose of the performance of the Works.
- d) If, for any permit, licence, approval or authorization listed in this Schedule 35, where there is a legislative requirement for the applicant to be the City, then DB Co shall act as the City's agent and will be responsible for all aspects of the application preparation and submittal process at DB Co's own cost and expense. If required, the City will sign off on the application.
- e) All other Permits, Licences, Approvals and Agreements not listed herein or otherwise noted, are the responsibility of DB Co.

[NOTE to PROPONENTS: the Ontario Ministry of the Environment and Climate Change (MOECC) has changed to the Ontario Ministry of the Environment, Conservation and Parks (MECP). For the purpose of this Schedule they are considered to be the same.]

Stage 2 LRT PLAA (Draft)

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
Site Plan Control – Development Outside of the Public Transit System Right-of-Way	City of Ottawa	Not started. Necessary where required under specific circumstances such as infrastructure not part of the LRT infrastructure, e.g. parking lot redesign and over-build of stations. Consultation with the City will be required.	DB Co
Building and Demolition Permits – Stations and MSF	City of Ottawa	Not started.	DB Co
Noise By-law Exemption	City of Ottawa	Not started.	DB Co
Approval under Sewer Use By-law to discharge waste water	City of Ottawa	Not started.	DB Co
Road Cut Permit (utility circulation)	City of Ottawa	Not started.	DB Co
Temporary Construction-Related Encroachment Permit	City of Ottawa	Not started.	DB Co
Temporary Construction Easements	City of Ottawa	Not started.	DB Co
Street or Lane Closing/Opening	City of Ottawa	Not started.	DB Co
Zoning By-Law Amendment	City of Ottawa	Not started. Necessary where required under specific circumstances , e.g. station related development.	DB Co

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
		Consultation with the City will be required. Where associated with station related development and	
Sign Permit	City of Ottawa	Not started.	DB Co
Permit under Ontario Heritage Act	City of Ottawa	Not started. May be necessary if heritage resources affected.	DB Co
Emergency Services Approval – Fire and Life Safety	City of Ottawa	Not started.	DB Co
Offer to Connect (“OTC”)	TBD	Not started.	The City will execute the Offers To Connect (“OTC”) with Hydro Ottawa; however, DB Co, at its sole cost and expense, to complete all work required to secure and fulfill OTC agreements including PA Schedule 15-2 – Design and Construction Requirements.c”) with Hydro Ottawa; however, DB Co, at its sole cost and expense, to complete all work required to secure and fulfill OTC agreements including PA Schedule 15-2 – Design and Construction Requirements.
Electrical Plan Review	Electrical Safety Authority	Not started.	DB Co

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
Construction Registration Permit	Electrical Safety Authority	Not started.	DB Co
Notice of Project as per <i>Occupational Health and Safety Act</i> (Ontario)	Ministry of Labour	Not started.	DB Co
Registration of Constructors and Employers Engaged in Construction	Ministry of Labour	Not started.	DB Co
Permit to Take Water	Ontario Ministry of the Environment and Climate Change	Not started.	DB Co
Environmental Compliance Approval (ECA)– SWM Facilities	Ontario Ministry of the Environment and Climate Change	Not started.	DB Co
ECA – Water and Sanitary Sewer	Ontario Ministry of the Environment and Climate Change (In certain instances the City of Ottawa has delegated authority from MOECC for review)	Not started.	DB Co

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
ECA – Air and Noise	Ontario Ministry of the Environment and Climate Change	Not started.	DB Co
Environmental Activity and Sector Registry (EASR)	Ontario Ministry of the Environment and Climate Change	Not started.	DB Co
Approvals from MOECC under Ontario Environmental Assessment Act O. Reg 231/08 for the LRT Confederation Line West Extension and Confederation Line East Extension.	Ontario Ministry of the Environment and Climate Change	Separate approvals have been received from the MOECC Minister for the Environmental Project Reports for Confederation Line West Extension and Confederation Line East Extension. The EPR reports and approvals are available in the data room.	City

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
Approvals from MOECC under Ontario Environmental Assessment Act O. Reg 231/08 for the Bayshore to Moodie Bus Rapid Transit (BRT) Conversion to Light Rail Transit (LRT)	Ontario Ministry of the Environment and Climate Change	Approvals have been received from the MOECC Minister for the Environmental Project Report for the Bayshore to Moodie Bus Rapid Transit (BRT) Conversion to Light Rail Transit (LRT) The EPR reports and approvals are available in the data room.	City
Approval from MOECC under Ontario Environmental Assessment Act through the Class EA for Provincial Transportation Facilities - Highway 417 Expansion preliminary design.	Ontario Ministry of the Environment and Climate Change	MTO has completed the Highway 417 (Ottawa Queensway) from Highway 416 to Easterly to Anderson Road, Preliminary Design and Environmental Assessment, GWP 663-93-00, Transportation Environmental Study Report (TESR) in accordance with their Class EA process for Provincial Transportation Facilities.	MTO
Approval from MOECC under Ontario Environmental Assessment Act through the Class EA for Provincial Transportation Facilities - Highway 417 Expansion detail design.	Ontario Ministry of the Environment and Climate Change	A [REDACTED]% design has been undertaken by WSP for the MTO DB Co will be required to complete a detail design documented in a Design and Construction Report (DCR) for MTO Highway 417 components	DB Co
Amendments to the approvals of MOECC under Ontario Environmental Assessment	Ontario Ministry of the	An addendum to the Confederation Line West Extension Environmental	DB Co is responsible for any other addendums to the approved to the

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
Act O. Reg 231/08	Environment and Climate Change	Project Report is being prepared by the City and for the Bayshore terminal bus station and lay-by area and will be provided to DB Co in the data room.	Environmental Project Reports that are required following Financial Close.
Amendments to the approvals of MOECC under Ontario Environmental Assessment Act – Highway 417 Expansion		The City of Ottawa has completed the Municipal Class Environmental Assessment (EA) Study for the Maitland Avenue Highway 417 Bridge Cycling Improvements. The 30 day review period will be complete on June 8, 2018. No Part II Order Requests were received and the MTO Clearance letter has been posted	DB Co responsible to incorporate these changes into the DCR as required.
Endangered Species Act Permits	Ontario Ministry of Natural Resources and Forestry	City has identified Species at Risk for which permitting under ESA will be required. The City has initiated the permits.	The City of Ottawa will submit all approval documentation with DB Co as an agent for the implementation of the permits conditions related to design and construction activities. The City of Ottawa will be responsible for the monitoring portion of the permit conditions. Permits that have been received prior to financial close will be provided. Pending permit applications will also be provided with the understanding the proposed mitigation measures are conditional until the permit is

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
			received.
Public Lands Act Work Permit	Ontario Ministry of Natural Resources and Forestry	Initiated by City.	DB Co to implement
Archaeology – Letter of acceptance verifying the report complies with Ministry requirements and filed with Ontario Public Register of Archaeological Reports	Ontario Ministry of Tourism Culture and Sport	City has received Acceptance Letters for Confederation West and Confederation East Extension Stage 1 Archaeological Assessment. Stage 2 Archaeological Assessments are underway by the City.	City is responsible to obtain the acceptance letter in respect of all those archaeological assessments completed by the City in advance of Financial Close. DB Co is responsible to obtain the acceptance letter in respect of all those archaeological assessments required after Financial Close.
Approval for provincial funding	Ontario Ministry of Transportation	City is seeking provincial funding	City
Approval from MTO for building and land use permit in accordance with the requirements of the Public Transportation and Highway Improvement Act	Ontario Ministry of Transportation	Not started.	DB Co
Approval from MTO for Encroachment Permits in accordance with the requirements of the Public Transportation and Highway Improvement Act for the new proposed Pedestrian Bridges and the	Ontario Ministry of Transportation	City is consulting with MTO Engineering Section and currently finalizing property requirements for submission to MTO Corridor Management Office. City is consulting with MTO Engineering	City

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
permanent System Infrastructure		Section to coordinate property requirements prior to submission to MTO Corridor Management Office for review and approval.	
Approval from MTO for Encroachment Permits in accordance with the requirements of the Public Transportation and Highway Improvement Act for Construction Activities on Lands as identified in Schedule 20.	Ontario Ministry of Transportation	Not started.	DB Co
All access to Highway Corridor Lands is coordinated and approved by the MTO using the Eastern Region ROW Form, which may be submitted following issuance of an Encroachment Permit for the segment of Highway Corridor Lands where access is sought.	Ontario Ministry of Transportation	Not started.	DB Co
Approval pursuant to Ontario Regulation 174/06 – Development, Interference with Wetlands and Alterations to Shorelines and Watercourses	Rideau Valley Conservation Authority	Not started.	DB Co
Approval pursuant to Section 35 of the Fisheries Act or Clearance that no approval is required.	Fisheries and Oceans Canada	City has consulted with the DFO and and no Fisheries Act Authorization is required for the Pinecrest Creek realignment. DFO provided a Letter of Advice which is available in the	DB Co to implement.

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
		data room.	
License to Collect Fish for Scientific Purpose	Ministry of Natural Resources and Forestry – Kemptville District	Not started.	DB Co
Land Access Permit	National Capital Commission	Not started. To be obtained by DB Co. should access be required to NCC properties not included in the Lands.	DB Co
Land Acquisition and/or Lease	PSPC, NCC	Contingent on City receiving NCC FLUDA	City
CEAA 2012 Section 67 CEAA determinations	NCC, PSPC, ECCC, DFO (if required)	The City has prepared the Confederation Line Environmental Effects Evaluation (EEE) to submit to federal authorities for determinations. NCC and PSPC have approved the EEE The NCC is currently preparing the environmental effects evaluation report for the Sir-John-A. Macdonald parkway linear park works.	Design and construction relevant environmental commitments part of the Confederation Line EEE document to be implemented by DB Co. The commitments for the Confederation Line EEE are included in Appendix A of Schedule 17 and the Confederation Line EEE has been made available.

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
Species at Risk Act Permits	Environment Canada and Climate Change	City has identified Species at Risk for which permitting under SARA will be required. The City has initiated permits. Applications have been made available.	The City of Ottawa will submit all approval documentation with DB Co as an agent for the implementation of the permits conditions related to design and construction activities. The City of Ottawa will be responsible for the monitoring portion of the permit conditions. Permits that have been received prior to financial close will be provided. Pending permit applications will also be provided with the understanding the proposed mitigation measures are conditional until the permit is received.
Approval for federal funding	Infrastructure Canada	City is seeking provincial funding	City
Any and all Remaining Permits, Licenses, Authorizations and Approvals	Various Agencies	Not started.	DB Co
NCC Approval in Principle	NCC	Western Light Rail Transit (WLRT) Project – Alignment and Functional Design Approval in Principle received from NCC on January 27, 2017. No Approval in Principle is needed to be issued by the NCC for the	City

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
		Confederation East Extension Alignment. Functional Design Approval in Principle received from NCC on June 20, 2018 for Moodie extension.	
NCC Concept Design Approval	NCC	~ May 2018	City based on DB Co's proposal design
NCC Property Transaction Approval	NCC	~ May 2018	City
NCC Federal Land Use, Design and Transaction Approval	NCC	January 1 2019 – December 31 2021	City
Transport Canada approval to build a SWM pond in the airport's restricted zone	Transport Canada	Letter of conditions from Transport Canada received on August 29, 2017.	DB Co to implement mitigation measures described in July 17, 2017 letter from NCC to Transport Canada except for the baseline bird monitoring program reporting to Transport Canada (August 2017 to December 2018) to be completed by the City.

Permits, Licenses and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or DB Co. or Other
Ontario <i>Invasive Species Act</i> obligations regarding propagation of restricted species	MOECC	Presence of dog strangling vine has been noted by the City during 2017 field surveys in the Pinecrest creek corridor.	DB Co to complete restricted invasive species surveys before project is carry out and to incorporatated mitigation measures into the Environmental Management Plan to ensure legal obligations are met.
Provincial Secondary Land Use Program – Real Estate transaction management review and approval process.	Hydro One Networks Inc. (HONI)	City is currently working with HONI and HONI have issued an approval in principle based on RCD. HONI will require well-advanced detail design prior to a final approval of all proposed SI / NMI real estate transaction within the transmission corridor. Final approval from HONI will require DB Co to work closely with HONI during detail design phase.	City

APPENDIX A – LISTED DB Co PLAAs

Listed DB Co PLAA's	Timeline for Final Determination by the City
Site Plan Control - Development Outside of the Public Transit System Right-of-Way	[REDACTED]
Building and Demolition Permits - Stations and MSF	[REDACTED]
Noise By-law Exemption * If approved by ward councillor	[REDACTED]
Approval discharge waste water - Under Sewer Use By-law	[REDACTED]
Road Cut Permit Utility Circulation	[REDACTED]
Temporary Construction-Related Encroachment Permit ROW/Property	[REDACTED]

Listed DB Co PLAA's	Timeline for Final Determination by the City
Street or Lane Closing/Opening	[REDACTED]
Zoning By-Law Amendment	[REDACTED]
Sign Permit	[REDACTED]
Permit Under Ontario Heritage Act	[REDACTED]
Emergency Services Approval - Fire and Life Safety	[REDACTED]

APPENDIX B – INDICATIVE MTO RESPONSE TIMES

- a) The following table identifies indicative MTO response times for certain DB Co Permits, Licences, Approvals and Agreements for which the MTO is the issuing Governmental Authority. The indicative MTO response times stated below are provided for information only and shall not be binding on the MTO, the City or any City Party. DB Co shall not be entitled to any relief from its obligations under the Project Agreement or additional time or compensation as a result of a failure of the MTO to approve or respond within such indicative response times.

Deliverable	Indicative MTO Response Times
Addenda to MTO Design Criteria	[REDACTED]
Proposal for use of products not on DSM (including samples, justification, etc. as applicable)	[REDACTED]
Final Eligibility Letter for EA Clearance and comments/responses	[REDACTED]
Designation of Construction Zone Associated speed reductions	[REDACTED]
Temporary PHM-125	[REDACTED]
Permanent PHM-125	[REDACTED]
Variations to Permitted Periods	[REDACTED]
Application(s) for extended closure	[REDACTED]
Application(s) for full closure	[REDACTED]

Ontario Regulation (for dedicated bus lane)	[REDACTED]
Closures (outside Permitted Periods, Sundays, Full Closure)	[REDACTED]
Encroachment Permits	[REDACTED]

SCHEDULE 36
INTERFACE AGREEMENT
[REDACTED]

**SCHEDULE 37
EXTENSION AND ADDITIONAL PHASES**

**ARTICLE I
DEFINITIONS**

1.1 Definitions

In this Schedule 37, unless the context otherwise requires:

- (a) **“City Extension Requirements”** means the proposal delivered by the City pursuant to Section 2.2(c).
- (b) **“DB Co Extension Proposal”** means the proposal delivered by DB Co pursuant to Sections 2.2(d) and (e).
- (c) **“Extension Contractor”** means a Person engaged by the City to perform any part of a System Extension, which Person may or may not be DB Co.
- (d) **“Extension Lenders”** means any Person or Persons who provide financing to an Extension Contractor or to DB Co in respect of a System Extension, and, where the context so permits, prospective financiers or lenders.
- (e) **“Extension Notice Response”** means the response delivered by the DB Co pursuant to Section 2.2(b).
- (f) **“Extension Permits, Licences and Approvals”** means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations needed to complete a System Extension described in the City Extension Requirements in accordance with Applicable Law.
- (g) **“Extension Work”** means the design, construction, installation, testing, commissioning and completion of a System Extension, including rectification of any Extension Work Minor Deficiencies.
- (h) **“Extension Work Minor Deficiencies”** means any defects, deficiencies and items of outstanding work which would not materially impair the City’s use and enjoyment of the System Extension.
- (i) **“Integrated System Extension”** means the development, testing, commissioning and certification of additional facilities, infrastructure, electrical and mechanical equipment, computer hardware and systems, including communication and control systems, extending, and connected with, the Existing Confederation Line, Confederation Line East Extension, and/or Confederation Line West Extension, such that all components of the System Infrastructure, as so extended, function together as one coherent fully integrated system.
- (j) **“Notice of Extension”** means the notice delivered by the City pursuant to Section 2.2(a).
- (k) **“Non-Integrated System Extension”** means the development, testing, commissioning and certification of additional facilities, infrastructure, electrical and mechanical equipment, computer hardware and systems, including communication and control systems, in order to form a transit system that connects with the Existing Confederation Line, Confederation Line East Extension or

Confederation Line West Extension, at a single interchange point such that the other components of the Existing Confederation Line, Confederation Line East Extension and Confederation Line West Extension do not form part of a coherent integrated system with such extended transit system.

- (l) “**DB Co Extension Proposal**” means the proposal delivered by DB Co pursuant to Section 2.2(d).
- (m) “**Reciprocal Agreement**” means the agreement to be executed in the event of a Non-Integrated System Extension as described in further detail in Section 3.1(e).
- (n) “**System Extension**” means either an Integrated System Extension or a Non-Integrated System Extension.

ARTICLE II SYSTEM EXTENSION

2.1 System Extension

- (a) The City and DB Co acknowledge that the City may, in its Discretion, elect to pursue one or more System Extensions during the Project Term. The City may pursue any System Extension through an Extension Contractor or through a negotiated agreement with DB Co in accordance with this Schedule 37. In the event the City elects to engage an Extension Contractor, the City may decide which Persons are eligible for consideration, and such persons may or may not include DB Co or any DB Co Party, in the City’s discretion, and the City may use any form of competitive procurement, sole-source contract, lease or transaction structure that the City in its Discretion decides. If the City elects to negotiate an agreement with DB Co, the Parties shall follow the process set out in Section 2.2. Notwithstanding the foregoing, the City shall not implement a System Extension in accordance with this Schedule 37 through a negotiated agreement with DB Co for any System Extension in respect of which capital costs are reasonably anticipated to exceed \$[REDACTED].
- (b) The City may in its Discretion elect to implement a System Extension by way of a Variation in which case Section 31.1 of the Project Agreement and the provisions of Schedule 22 – Variation Procedure shall apply in respect of such System Extension.
- (c) The City may in its Discretion elect to procure or negotiate, as the case may be, the performance of Extension Work in respect of a System Extension through consolidated or separate procurements or negotiations.
- (d) For clarity, the City may pursue a System Extension at any time or times pursuant to any of the alternatives set out in this Section 2.1 in its Discretion. In the event the City has elected to pursue a System Extension in accordance with this Section 2.1, the City may, at any time prior to entering into a binding agreement in respect of the System Extension, in its Discretion, elect to cease pursuing the System Extension under the chosen alternative and pursue the same System Extension under a different alternative process.

2.2 Negotiation between the City and DB Co of Extension Work

- (a) If the City notifies DB Co that it wishes to negotiate with DB Co to perform Extension Work, the City shall provide DB Co with a Notice of Extension which will include information respecting the project, including:
 - (i) a description of the scope of the Extension Work;
 - (ii) preliminary “term sheet level” output specifications for the Extension Work, including: details with respect to alignment, number of stations, length of track (in kilometres), modelling results and performance expectations with respect to the System Extension, as-builts for Existing Infrastructure and utilities, condition reports, results of environmental assessments, development plans, stakeholder engagement information, location and capacity requirements of any maintenance and storage facilities, and
 - (iii) a preliminary schedule and required timelines for completion of the Extension Work.
- (b) Within a period of 30 days after the date of receipt of the Notice of Extension, DB Co shall deliver to the City its Extension Notice Response advising the City whether or not DB Co desires to proceed to the next stage of negotiation with the City in respect of the System Extension. In the event DB Co desires to proceed, DB Co shall, within a period of 60 days after the delivery of its Extension Notice Response, deliver to the City a preliminary cost estimate and schedule for the Extension Work.
- (c) If the City elects, in its Discretion, to continue to consider DB Co for the Extension Work, the City shall within a period of 120 days after the date of receipt of DB Co’s Extension Notice Response, deliver its City Extension Requirements. The City Extension Requirements (which shall be non-binding on the City) shall include:
 - (i) a draft heads of terms agreement for the Extension Work;
 - (ii) draft output specifications and commissioning processes for the System Extension;
 - (iii) draft “term sheet level” parameters of the payment mechanism to be used in respect of the Extension Work; and
 - (iv) guidelines with respect to the structure of construction or permanent financing to be secured by DB Co;
- (d) Within a period of 150 days after the date of receipt of the City Extension Requirements, DB Co shall deliver to the City the DB Co Extension Proposal which shall be non-binding on DB Co. The DB Co Extension Proposal shall include:
 - (i) a detailed cost estimate and construction schedule in respect of the Extension Work;
 - (ii) any impact the Extension Work, would have on DB Co’s activities under the Project Agreement;

- (iii) any contemplated amendments to the Project Agreement to coordinate the Extension Work;
- (iv) the expected Direct Costs of DB Co and each Subcontractor that will be incurred in respect of the Extension Work, including:
 - (A) any Capital Expenditure that will be incurred; and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on DB Co's cash flows from incurring, reducing or avoiding such costs;
- (v) preliminary terms of the financing structure specified in the City Extension Requirements;
- (vi) any Extension Permits, Licences and Approvals that must be obtained or any Permits, Licences and Approvals amended for the Extension Work, to be implemented;

in each case, together with such supporting information and justification as is reasonably required.

- (e) In preparing the DB Co Extension Proposal, DB Co shall include sufficient information to demonstrate to the City's satisfaction, acting reasonably, that:
 - (i) DB Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders to minimize costs in respect of the System Extension;
 - (ii) except as otherwise set out herein, all costs of DB Co and each Subcontractor are limited to Direct Costs;
 - (iii) DB Co and any Subcontractor shall charge only the margins for overhead and profit as set out in Appendix B to Schedule 22 – Variation Procedure (such margins each calculated on the basis of the applicable Direct Costs so that no margin of DB Co or any Subcontractor is calculated on any other margin under the Project Agreement of DB Co or any Subcontractor), and no other margins or mark ups;
 - (iv) the margins for overheads and profit as set out in Appendix B to Schedule 22 – Variation Procedure as applicable to DB Co's Direct Costs shall only be chargeable on Direct Costs of DB Co, such that DB Co shall not charge any margins on any amounts charged by any Subcontractors;
 - (v) all costs of completing the Extension Work, including Capital Expenditures, reflect labour rates applying in the open market to providers of services similar to those required for the Extension Work;
 - (vi) DB Co has mitigated or will mitigate the impact of the Extension Work on DB Co's obligations under the Project Agreement, including on the Works Schedule, the expected usage of utilities, and the Direct Costs to be incurred; and

- (vii) DB Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required in respect of the Extension Work, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than DB Co would apply if all costs incurred were to its own account without recourse to the City, including using commercially reasonable efforts to mitigate such costs.
- (f) Subject to Section 2.2(g), as soon as practicable after the receipt of the DB Co Extension Proposal, the City and DB Co shall, in good faith and acting reasonably, negotiate the terms of the binding agreement for the performance of the Extension Work, as well as any necessary amendments to the Project Agreement, based on the contents of the City Extension Requirements and the DB Co Extension Proposal.
- (g) Notwithstanding anything contained in this Schedule 37, except as may be the subject matter of a competitive procurement process, no agreement relating to the subject matter of this Schedule 37 shall be effective unless entered into in writing by each of the Parties and the entering into of same shall be subject to each Party's Discretion. Either Party may in its Discretion elect to cease negotiations at any time in the process set out in this Section 2.2 prior to the signing of such written agreement.

ARTICLE III DB CO COOPERATION

3.1 DB Co Cooperation with the City and Interface with an Extension Contractor

- (a) In the event the City pursues a System Extension with an Extension Contractor that is not DB Co, subject to Section 3.1(b) DB Co shall use commercially reasonable efforts to provide such assistance to the City as the City may request, acting reasonably. Such assistance shall include but is not limited to:
 - (i) the development of technical specifications in respect to the Extension Work, and the evaluation of designs proposed by prospective Extension Contractors to ensure compatibility with the deliverables under the Project Agreement and other items as specified by the City;
 - (ii) permitting the City access to relevant information respecting the LMSF and other items as specified by the City;
 - (iii) advising the City on potential modifications to the Extension Work, that could result in cost savings or other benefits to the City; and
 - (iv) the development of an interface protocol between the City, DB Co and the Extension Contractor.

The City and DB Co's obligations under this Section 3.1(a) shall be subject to and in accordance with the provisions of Schedule 24 – Intellectual Property.

- (b) The City shall pay DB Co reasonable consulting fees in respect of the assistance DB Co provides pursuant to this Section 3.1. Such consulting fees shall be agreed by the parties prior to DB Co providing assistance to the City and shall be invoiced on a monthly basis

(or such other period as the parties may agree) and shall be paid within 30 days of receipt of an invoice from DB Co. Each DB Co invoice shall set out in reasonable detail, the nature of assistance provided in the invoice period, the personnel involved and the time committed by DB Co personnel in respect of such assistance.

- (c) As soon as practicable after the City provides notice to DB Co that the City has reached a binding agreement with an Extension Contractor, the City and DB Co shall meet with the Extension Contractor and, in good faith and acting reasonably, negotiate and execute an interface agreement and/or construction procedures agreement to govern matters relating to the coordination of DB Co's activities in respect of the Project Operations and the Extension Contractor's activities relating to the Extension Work. The City shall also include, in its agreement with any Extension Contractor, an obligation on the Extension Contractor to negotiate with the City and DB Co in the terms of the interface agreement and/or construction procedures agreement in good faith and acting reasonably.
- (d) In the event of an Integrated System Extension, the agreement to be negotiated between the City, DB Co and the Extension Contractor pursuant to Section 3.1(c) shall include provisions related to:
 - (i) the rights and obligations of the City, DB Co and the Extension Contractor in respect of the physical linking, testing and commissioning, safety and system certification of the System and the Integrated System Extension;
 - (ii) commissioning requirements with respect to the extended lines; and
 - (iii) a protocol with respect to the testing of the entire Integrated System Extension to ensure integration and ability for the operation of the entire line as contemplated in the Output Specifications and the final output specifications developed in respect of the Integrated System Extension.
- (e) In the event of a Non-Integrated System Extension, the City, DB Co, the Extension Contractor, and the Extension Lenders shall execute a reciprocal agreement in a form to be agreed to between the parties acting reasonably and negotiating in good faith (the "**Reciprocal Agreement**"). The Reciprocal Agreement shall govern the rights of the parties in respect of the station, infrastructure or other location on the System Infrastructure which has an interchange point with the Non-Integrated System Extension and shall govern matters such as:
 - (i) reciprocal easements or other rights-of-access;
 - (ii) appropriate cost sharing arrangements;
 - (iii) sharing of information;
 - (iv) decision making process regarding matters affecting the interchange between the System Infrastructure and the Non-Integrated System Extension; and
 - (v) mutual repair obligations of structural or other elements in common between the System Infrastructure and the Non-Integrated System Extension.

**SCHEDULE 38
UTILITY BASELINE REPORT**

[REDACTED]