

SCHEDULE 24

EXPIRY TRANSITION PROCEDURE

1. INDEPENDENT INSPECTOR

- 1.1 Not less than 90 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with the City procurement policies, engage an independent and suitably qualified and experienced person (the “**Independent Inspector**”) to carry out inspections of the System pursuant to this Schedule 24.
- 1.2 Project Co and the City shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector’s engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector’s engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 of this Schedule 24 by the specified deadline, then the Independent Inspector shall be selected as follows:
- (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide notice thereof to the other Party; and
 - (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
 - (c) if the Parties have not selected a common person, then the Independent Inspector shall be selected in accordance with Schedule 27 – Dispute Resolution Procedure.

2. CONDITION OF SYSTEM ON EXPIRY

- 2.1 Subject to the exceptions specified in Section 2.2 of this Schedule 24, on the Expiry Date:
- (a) each element of the System and the Site (including the ground soil located on the Site) shall be in a condition which is consistent with due performance by Project Co of its obligations under this Project Agreement and, in particular, is consistent with the System having been maintained in accordance with the Maintenance and Rehabilitation Requirements, and, with respect to the Site and the ground soil located on the Site, does not deviate from the Pre-Existing Environmental Site Conditions by reason of any Contamination for which Project Co is responsible pursuant to this Project Agreement;

- (b) each element of the System shall be in good operating order (normal wear and tear excepted) and capable of performing in accordance with the performance specifications and standards set out in the Expanded Output Specifications; and
- (c) each element of the System shall comply with Appendix C of Schedule 15-3 Maintenance and Rehabilitation Requirements.

(collectively, the “**Expiry Transition Requirements**”).

2.2 For greater certainty, this Schedule 24 shall not apply to any System Infrastructure to be maintained by the City in accordance with this Project Agreement.

3. SYSTEM INSPECTIONS

3.1 The Parties shall cause the Independent Inspector to perform an inspection of the System and to produce and deliver to each of the Parties a written report (a “**System Condition Report**”) not less than 84 months prior to the Expiry Date that:

- (a) identifies the condition of the System and each element of the System (subject to the exceptions specified in Section 2.2 of this Schedule 24) in relation to the Expiry Transition Requirements;
- (b) assesses Project Co’s business case related to capital replacement (which, for greater certainty, will include consideration of energy consumption), and provides the Independent Inspector’s opinion on both the adequacy of Project Co’s proposed strategy and the consistency of Project Co’s proposed strategy with the Asset Management Plan;
- (c) identifies any works required to ensure the System and each element of the System (subject to the exceptions specified in Section 2.2 of this Schedule 24) will meet the Expiry Transition Requirements on the Expiry Date (the “**Expiry Transition Works**”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
- (d) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Expiry Transition Works (the “**Expiry Transition Works Costs**”); and
- (e) details how the Expiry Transition Works Costs were calculated.

3.2 The Parties shall cause the Independent Inspector to perform another inspection of the System and produce and deliver to each of the Parties an updated System Condition Report (each a “**Revised System Condition Report**”) on each anniversary of the date of the original System Condition Report.

3.3 The Asset Management Plan shall be amended and updated, as applicable, to include all Expiry Transition Works identified in either the System Condition Report or any Revised

System Condition Report not already included in the then current Asset Management Plan.

- 3.4 Project Co shall carry out the Expiry Transition Works at its own cost notwithstanding that the actual cost of the Expiry Transition Works may be higher than the Expiry Transition Works Costs.
- 3.5 Either Party may dispute the System Condition Report or any Revised System Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with Schedule 27 – Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 27 – Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the System Condition Report or any Revised System Condition Report, then either the System Condition Report or any Revised System Condition Report, as the case may be, shall be deemed to be amended accordingly, as amended pursuant to Section 3.3 of this Schedule 24, and all deductions and payments permitted or required by Section 4 of this Schedule 24, shall be adjusted accordingly.

4. PAYMENTS TO AND FROM ESCROW ACCOUNT

- 4.1 Following the date for delivery of the System Condition Report, for the purposes of Section 4.2 of this Schedule 24, the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the “**Expiry Rehabilitation Costs**”). Where the Expiry Transition Works Costs are greater than the Expiry Rehabilitation Costs, the difference between the Expiry Transition Works Costs and the Expiry Rehabilitation Costs shall be apportioned equally over the Contract Months from the date the System Condition Report is to be delivered hereunder to the Expiry Date (each instalment being the “**Expiry Transition Amount**”). If the System Condition Report is delivered after the date for delivery hereunder, then the first instalment to be paid shall also include the amounts to be paid under the instalments that would have been payable prior to the date the System Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.3 or 3.5 of this Schedule 24, the Parties agree that the Expiry Transition Amount shall be adjusted accordingly.
- 4.2 Subject to Sections 4.3 and 4.5 of this Schedule 24, the City may deduct the Expiry Transition Amount from each Monthly Service Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the “**Escrow Account**”), the Expiry Transition Amount. If in any Contract Month, the Expiry Transition Amount is greater than the relevant Monthly Service Payment, the City may deduct the difference between the Expiry Transition Amount and the Monthly Service Payment from the next Monthly Service Payment or from such other Contract Month as otherwise agreed between the Parties.
- 4.3 The City shall not deduct any amount from a Monthly Service Payment as contemplated in Section 4.2 of this Schedule 24 if, at such time, the funds in the Escrow Account

exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed.

- 4.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. The City shall consider such request within 10 Business Days and if the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then the City shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by the City to evaluate such request.
- 4.5 Following the date of any Revised System Condition Report, if the amount in the Escrow Account (being the deductions of the Expiry Transition Amount made since the System Condition Report) together with the deductions to be made from the remaining Monthly Service Payments is less than the value (based on the Expiry Transition Works Costs) of the remaining Expiry Transition Works (as amended) yet to be performed, then the City may deduct such shortfall, in equal instalments, from each remaining Monthly Service Payment until the Expiry Date, and pay each instalment into the Escrow Account and Section 4.4 of this Schedule 24 shall continue to apply until the Expiry Date.
- 4.6 As an alternative to the deductions permitted by Sections 4.2 and 4.5 of this Schedule 24 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4 of this Schedule 24, Project Co may (and if, at any time, the amounts which the City is permitted to deduct pursuant to Sections 4.2 and 4.5 of this Schedule 24 are greater than the remaining Monthly Service Payments, Project Co shall), within 5 Business Days of a written request from the City, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of the City in an amount equal to the amounts which the City is permitted to deduct pursuant to Sections 4.2 and 4.5 of this Schedule 24, in a form and from a surety or bank, as applicable, acceptable to the City.

5. PROJECT CO NOT RELIEVED OF OBLIGATIONS

5.1 Notwithstanding:

- (a) any agreement of the City to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of the City in any inspection under this Schedule 24; and
- (c) the complete or partial carrying out of the Expiry Transition Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Project Agreement, including without limitation the Output Specifications.

6. FINAL SYSTEM CONDITION REPORT

- 6.1 The Parties shall cause the Independent Inspector to perform an inspection of the System and to produce and deliver to each of the Parties a System Condition Report within 30 Business Days after the Expiry Date (the “**Final System Condition Report**”) that documents whether the System met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.
- 6.2 If the Final System Condition Report identifies any Expiry Transition Works, City may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and the City shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Expiry Transition Security to Project Co.
- 6.3 Provided that the funds in the Escrow Account and/or the Expiry Transition Security is adequate to meet Project Co’s obligations in respect of the Expiry Transition Works identified in the Final System Condition Report, following any withdrawal from the Escrow Account or call upon the Expiry Transition Security in accordance with Section 6.2, Project Co shall have no further liability with respect to such Expiry Transition Works.

If no Expiry Transition Works are identified in the Final System Condition Report, the City shall, within 20 Business Days of receipt by the City of the Final System Condition Report, pay the funds in the Escrow Account (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co, unless the City disputes the Final System Condition Report, in which case the Escrow Account and Expiry Transition Security shall be dealt with as determined in accordance with Schedule 27 – Dispute Resolution Procedure.