

**PROJECT AGREEMENT
(EXECUTION VERSION)**

**TRILLIUM LINE EXTENSION
OTTAWA STAGE 2 LRT PROJECT**

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SCHEDULES

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Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Custody Agreement
Schedule 4	- Funding Requirements
Schedule 5	- Direct Agreements
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Mobility Matters
Schedule 8	- [Intentionally Deleted]
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Integrated Management System Requirements
Schedule 12	- Works Scheduling Requirements
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Testing and Commissioning
Schedule 15	- Output Specifications
Schedule 15-1	- Technical Terms and Reference Documents
Schedule 15-2	- Design and Construction Requirements
Schedule 15-3	- Maintenance and Rehabilitation Requirements
Schedule 16	- Encumbrances
Schedule 17	- Environmental Obligations
Schedule 18	- Communications and Stakeholder Engagement Obligations
Schedule 19	- Payment Mechanism
Schedule 20	- Construction Period Payments
Schedule 21	- Variation Procedure
Schedule 22	- Compensation on Termination
Schedule 23	- Expiry Transition Procedure
Schedule 24	- Insurance and Performance Security Requirements
Schedule 25	- Record Provisions
Schedule 26	- Dispute Resolution Procedure
Schedule 27	- Refinancing
Schedule 28	- Insurance Trust Agreement
Schedule 29	- Project Co Information
Schedule 30	- [REDACTED]
Schedule 31	- Works Report Requirements
Schedule 32	- City Permits, Licences, Approvals and Authorizations
Schedule 33	- Lands
Schedule 34	- [Intentionally Deleted]
Schedule 35	- Intellectual Property
Schedule 36	- System Extension
Schedule 37	- [Intentionally Deleted]
Schedule 38	- [Intentionally Deleted]
Schedule 39	- Revenue Vehicle Supply Contract
Schedule 40	- Utility Baseline Report
Schedule 41	- Lenders' Direct Agreement

THIS PROJECT AGREEMENT is made as of the 28th day of March, 2019

BETWEEN:

CITY OF OTTAWA

(the “City”)

AND:

TRANSITNEXT GENERAL PARTNERSHIP

(“Project Co”)

WHEREAS:

- A. The City wishes to develop a new light rapid transit system which includes the following elements:
- (a) Expanding the Existing Trillium Line with approximately 11.5 km of new single track (with passing sidings) from the existing terminus at Greenboro Station to the proposed new Limebank Station, the majority of which follows the existing City-owned (former CPR) railway corridor;
 - (b) An additional extension of the Existing Trillium Line by way of a 4.5 km-long Airport Link to the Airport that will connect to the mainline at the proposed South Keys Station;
 - (c) Extension of passing sidings within the Existing Trillium Line (at the Gladstone, Brookfield and Carleton locations) to enhance operational reliability;
 - (d) Extension of the five (5) existing station platforms (at the Bayview, Carling, Mooney’s Bay, Carleton and Greenboro locations) to accommodate longer train consists;
 - (e) Addition of new stations at Gladstone and Walkley;
 - (f) Addition of proposed stations on the Trillium Line Extension at the South Keys, Leitrim, Bowesville and Limebank locations;
 - (g) Proposed Stations on the Trillium Line Extension for the proposed connection to the Ottawa MacDonald-Cartier International Airport at the Uplands and Airport Terminal locations;
 - (h) Upgrade of existing bridge structures on the Existing Trillium Line and upgrade of the existing Dow’s Lake tunnel structure and mechanical ventilation system;
 - (i) Expansion of the pedestrian underpasses at Carleton University, new underpass north of Hunt Club Rd and new underpass under the South Keys Station;
 - (j) Construction of rail, pedestrian or other overpass structures at Bayview Station, over the Rideau River, Ellwood Diamond, Hunt Club Road, Lester Road, Leitrim Road, Earl

Armstrong Road, Bowesville Road, Mosquito Creek, Limebank Road, Airport Parkway and Uplands Drive, and ecological overpass (at High Road);

- (k) Construction of the New Walkley Yard to be constructed west of Albion Road, across the street from the Existing Walkley Yard;
 - (l) Improved connectivity for pedestrians and cyclists parallel to the Existing Trillium and Trillium Line Extension and in the vicinity of stations, including construction of a new multi-use path (MUP) system;
 - (m) Extension of and upgrades to the Communications Systems and Signalling and Train Control Systems; and
 - (n) Provisions of a New Vehicle Fleet.
- B. Project Co will provide the Project Operations, which Project Operations include the elements set out in Recital A and (i) the design, construction, financing, maintenance and rehabilitation of the System Infrastructure and the New Municipal Infrastructure, (ii) the procurement, financing, maintenance and rehabilitation of the New Vehicle Fleet, and, (iii) the maintenance and rehabilitation of the Existing Vehicle Fleet (the “**Project**”).
- C. The City and Project Co wish to enter into this project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- D. With a view to ensuring that the 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 Project 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	- Custody Agreement
Schedule 4	- Funding Requirements
Schedule 5	- Direct Agreements

Schedule 6	-	Independent Certifier Agreement
Schedule 7	-	Mobility Matters
Schedule 8	-	[Intentionally Deleted]
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Integrated Management System Requirements
Schedule 12	-	Works Scheduling Requirements
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Testing and Commissioning
Schedule 15	-	Output Specifications
Schedule 15-1	-	Technical Terms and Reference Documents
Schedule 15-2	-	Design and Construction Requirements
Schedule 15-3	-	Maintenance and Rehabilitation Requirements
Schedule 16	-	Encumbrances
Schedule 17	-	Environmental Obligations
Schedule 18	-	Communications and Stakeholder Engagement Obligations
Schedule 19	-	Payment Mechanism
Schedule 20	-	Construction Period Payments
Schedule 21	-	Variation Procedure
Schedule 22	-	Compensation on Termination
Schedule 23	-	Expiry Transition Procedure
Schedule 24	-	Insurance and Performance Security Requirements
Schedule 25	-	Record Provisions
Schedule 26	-	Dispute Resolution Procedure
Schedule 27	-	Refinancing
Schedule 28	-	Insurance Trust Agreement
Schedule 29	-	Project Co Information
Schedule 30	-	[REDACTED]
Schedule 31	-	Works Report Requirements
Schedule 32	-	City Permits, Licences, Approvals and Authorizations
Schedule 33	-	Lands
Schedule 34	-	[Intentionally Deleted]
Schedule 35	-	Intellectual Property
Schedule 36	-	System Extension
Schedule 37	-	[Intentionally Deleted]
Schedule 38	-	[Intentionally Deleted]
Schedule 39	-	Revenue Vehicle Supply Contract
Schedule 40	-	Utility Baseline Report
Schedule 41	-	Lenders' Direct Agreement

- (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 Project Co's proposal which are incorporated by explicit reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close, the Request for Proposals and Project 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 Project Co, the City or anyone else (including anyone pursuant to Schedule 26 - Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Operations, any obligations or liabilities of Project 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, opinion 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 Project Co, no consent, approval, opinion or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.
- (g) The organization of the Output Specifications into divisions, sections and parts shall not control Project Co in dividing the Works or the Maintenance and Rehabilitation Services among the Project Co Parties or in establishing the extent of the Works or the Maintenance and Rehabilitation Services 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 32 - City Permits, Licences, Approvals and Authorizations;
 - (vi) Schedule 33 - Lands;
 - (vii) Schedule 26 - Dispute Resolution Procedure;
 - (viii) Schedule 20 - Construction Period Payments;
 - (ix) Schedule 19 - Payment Mechanism;
 - (x) Schedule 15 - Output Specifications;
 - (xi) Schedule 17 - Environmental Obligations;

- (xii) Schedule 24 - Insurance and Performance Security Requirements;
 - (xiii) Schedule 21 - Variation Procedure;
 - (xiv) Schedule 10 - Review Procedure;
 - (xv) Schedule 14 - Testing and Commissioning;
 - (xvi) Schedule 11 - Integrated Management System Requirements
 - (xvii) Schedule 27 - Refinancing;
 - (xviii) Schedule 22 - Compensation on Termination;
 - (xix) Schedule 25 - Record Provisions;
 - (xx) Schedule 23 - Expiry Transition Procedure;
 - (xxi) the other Schedules in the order in which they are listed in Section 1.1(b); and
 - (xxii) Schedule 13 - Project 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 Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project 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 Project Co.
- (d) The City and Project Co shall comply with the determination of the City Representative pursuant to this Section 1.2 unless Project Co disputes the decision of the City Representative in which event such Dispute may be referred for resolution in accordance with Schedule 26 - 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 (after giving effect to any applicable conflict of law rules), the most stringent standards shall govern.

1.5 Early Works Agreement and Enabling Works

- (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 7, 2019 (the “**Early Works Agreement**”). Without prejudice to the generality of the foregoing, any part of the Works performed by Project 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 20 – Construction Period Payments of the Project Agreement.
- (b) Upon achievement of Financial Close, Project Co shall assume responsibility for all Enabling Works, and all Enabling Works shall be deemed to be Works hereunder and treated as having been performed under the terms of the Project Agreement. The purchase order for Enabling Works shall be assigned to Project Co on Financial Close, and all amounts paid by the City under and in accordance with such purchase order shall be credited by Project Co to the City and set-off against the first Construction Period Payment(s) becoming payable by the City to Project Co hereunder.

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1 to 11, 15 to 24, 27 to 29, 33, 35 to 37 and 49 to 62, and Schedule 1 – Definitions and Interpretation, Schedule 2 – Completion Documents, Schedule 3 – Custody Agreement, Schedule 9 – Key Individuals, Schedule 10 – Review Procedure, Schedule 11 – Integrated Management System Requirements, Schedule 12 – Works Scheduling Requirements, Schedule 13 – Project Co Proposal Extracts, Schedule 16 – Encumbrances, Schedule 17 – Environmental Obligations, Schedule 18 – Communications and Stakeholder Engagement Obligations, Schedule 21 – Variation Procedure, Schedule 24 – Insurance and Performance Security Requirements, Schedule 25 – Record Provisions, Schedule 26 – Dispute Resolution Procedure, Schedule 32 – City Permits, Licences, Approvals and Authorizations, Schedule 33 – Lands, Schedule 35 – Intellectual Property and Schedule 36 – System Extension will come into effect on Commercial Close. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

2.2 Letter of Credit

- (a) Unless a Letter of Credit is drawn by the City in accordance with the provisions of this Project Agreement, the City shall release and deliver the Letter of Credit to Project Co on Financial Close.

- (b) Project Co shall ensure that the Letter 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.
- (c) If Project Co delivers one or more Letter(s) of Credit from one or more Letter of Credit Provider(s) in accordance with Section 9.1(2) of the Request for Proposals, Project Co acknowledges and agrees that:
 - (i) the City may draw upon any Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount in accordance with the terms of this Project Agreement;
 - (ii) the City may draw on any 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 Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Project Co Party; and
 - (iv) the provision of a Letter of Credit shall not in any way prejudice or adversely affect the rights of the City to draw on the Letter 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 Letter of Credit is not the result of any act or omission of the Letter of Credit Provider whose Letter of Credit is drawn upon.

2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, Project 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 date of Financial Close:
 - (i) Project 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 Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If Project Co fails to deliver to the City any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the date of Financial Close (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 draw on the Letter of Credit to retain the proceeds thereof as liquidated damages and may 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 Project 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 Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the date of Financial Close (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Letter of Credit and to terminate this Project Agreement in its entirety by written Notice having immediate effect.

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 Project Co's obligation to renew the Letter of Credit pursuant to Section 2.2(b), 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 Project Co to assign to a designee of the City which has agreed to assume:
 - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Authorizations; and
 - (B) those contracts between Project Co and any Project Co Party which the City elects to be assigned.
- (c) If the City exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Section 2.4(b)(ii)(A) and (B), Project Co will be entitled to the return of its 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 the Design and Bid Fee, plus any applicable HST. The City's obligation to return the 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 to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

3. SCOPE OF AGREEMENT

3.1 Scope of Agreement

- (a) Project Co shall undertake the Project and perform the Project Operations in accordance with and subject to the provisions of this Project Agreement.
- (b) Project 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.

4. BUSINESS OPPORTUNITIES, ADVERTISING AND PUBLIC EVENTS

4.1 Business Opportunities

- (a) Project Co acknowledges that the City: (i) may from time to time develop, or permit the development of, commercial and other opportunities on or associated with the System Infrastructure, including, for greater certainty, the addition of retail facilities, kiosks, and newsstands, the erection of billboards and other forms of advertising, the granting of naming rights associated with the System Infrastructure, wifi, radio and public television on the System Infrastructure (“**Business Opportunities**”); (ii) reserves the right to all Business Opportunities; and (iii) may, as set out in this Project Agreement, grant rights in the Business Opportunities to Project Co or other parties.
- (b) For clarity, and subject to Section 4.1(d) below, Project Co acknowledges and agrees that the addition of retail facilities, kiosks, or newsstands, the erection of billboards and other forms of advertising by the City or the implementation of other Business Opportunities by the City shall not entitle Project Co to any additional compensation or extension of time in relation thereto.
- (c) Project Co shall cooperate with the City in the City’s implementation of Business Opportunities.
- (d) To the extent that the development of a Business Opportunity or any other activities referenced in (b) above by the City (or any third party authorized by the City) interferes with Project Co’s license rights hereunder or interferes with Project Co’s ability to perform the Project Operations, such development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (e) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for the City’s consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both the City and Project Co. The City may accept any such proposal in its sole discretion and subject to such terms and conditions as the City may require.
- (f) Notwithstanding that Project Co has proposed a Business Opportunity to the City for its consideration, Project Co acknowledges and agrees that:
 - (i) the City reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party;
 - (ii) the City may initiate a separate procurement process for the development of such Business Opportunity; and
 - (iii) Project Co shall not be entitled to receive any payment or compensation from the City (in any form) on the basis that Project Co proposed such Business Opportunity to the City, even if the City proceeds with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party.

5. REPRESENTATIONS AND WARRANTIES

5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to the City that as of Commercial Close:
- (i) Project Co is [REDACTED] 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:
 - (A) [REDACTED] under the laws of Canada, is in good standing with Corporations Canada with respect to the filing of annual reports, and has all the requisite 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 duly observe and perform its obligations hereunder in its capacity as a partner of Project Co;
 - (B) [REDACTED] under the laws of Canada, is in good standing with Corporations Canada with respect to the filing of annual reports, and has all the requisite 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 duly observe and perform its obligations hereunder in its capacity as a partner of Project Co;
 - (ii) all partnership interests in Project Co as of Commercial Close have been disclosed to the City;
 - (iii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction, maintenance and rehabilitation of light rail transit projects, including the maintenance of light rail vehicles, similar to the Project in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
 - (iv) Project Co, and [REDACTED] in its capacity as partner of Project Co 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 Project Co or [REDACTED] in its capacity as partner of Project Co;
 - (v) no steps or proceedings have been taken or are pending to supersede or amend:
 - (A) the constating or formation documents of Project Co, including the partnership agreement governing Project Co; or
 - (B) the constating documents, articles or by-laws of [REDACTED],

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

- (vi) this Project Agreement has been duly authorized, executed, and delivered by Project Co and by [REDACTED] in its capacity as partner of Project Co and constitutes a legal, valid, and binding obligation of Project 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;
- (vii) the execution, delivery, and performance by Project Co, and by [REDACTED] in its capacity as partner of Project 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 or partnership agreements;
 - (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;
- (viii) no Project Co Event of Default has occurred and is continuing;
- (ix) all of the information regarding [REDACTED] set out in Schedule 29 - Project Co Information is true and correct in all material respects;
- (x) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co, [REDACTED] or, to Project Co's knowledge, any Project 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 Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project 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;
- (xi) Project Co has conducted its own investigations and has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of the City and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Maintenance and Rehabilitation Services in accordance with this Project Agreement in a

good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;

- (xii) Project Co, and [REDACTED] in its capacity as partner of Project Co, is able to meet its obligations as they generally become due;
- (xiii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada);
- (xiv) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xv) each of Project Co, [REDACTED] is not a Non-Resident;
- (xvi) no Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project;
- (xvii) to the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project;
- (xviii) either:
 - (A) the COR-Certified Construction Project 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 in good standing at all times during the performance of the Works in accordance with its terms, provisions and conditions; or
 - (B) the COR-Qualified Construction Project 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 Project 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 (or has made an application to IHSA for its Health and Safety Certificate as required under this Project Agreement) and has the ability to maintain such Health and Safety Certification until the Final Completion Date in accordance with its terms, provisions and conditions.

5.2 Representations and Warranties of the City

- (a) The City represents and warrants to Project Co that as of Commercial Close:
 - (i) the execution and delivery of this Project Agreement and all documents, instruments and agreements required to be executed and delivered by the City pursuant to this Project

Agreement, and the completion of the transactions contemplated by this Project Agreement, have been duly authorized, and this Project Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms, except as may be limited by laws of general application affecting the enforceability of remedies and rights of creditors and except that equitable remedies such as specific performance and injunction are in the discretion of a court and except as may be subject to the special jurisdiction and powers of the Ontario Municipal Board over defaulting municipalities under the *Municipal Affairs Act*, R.S.O. 1990 c. M.46, as amended;

- (ii) the City is a municipal corporation duly and validly constituted and subsisting under the laws of the Province of Ontario and has full power and capacity to execute and deliver this Project Agreement and carry out the transactions contemplated by and duly observe and perform all of its obligations contained in this Project Agreement and all documents, instruments and agreements required to be executed and delivered by the City pursuant to this Project Agreement;
- (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 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 therein, there are no current and, to the knowledge of the City, there are no pending or threatened actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions, or other proceedings of, by, against, or relating to, the City which, individually or in the aggregate, could have a material adverse effect on the Project or the ability of the City to perform its obligations under this Project Agreement and the City does not Have Knowledge of any basis for any such action, claim, demand, lawsuit, assessment, arbitration, judgment, award, decree, order, injunction, prosecution or other proceeding;
- (vi) the City has (or, in the case of the Additional Property Interests, will have) acquired the Lands and Additional Property Interests sufficient to enable to City to grant or to cause to be granted to Project Co the license rights contemplated in Section 14.2;
- (vii) the Project is permitted by the existing official plan, zoning and other land use restrictions applicable to the City and the Project; and
- (viii) the City is able to meet its obligations as they generally become due.

- (b) The City represents and warrants to Project Co that as of Commercial Close, no City Event of Default has occurred and is continuing.
- (c) The representations and warranties contained in Sections 5.2(a)(i), 5.2(a)(ii), 5.2(a)(iii), 5.2(a)(iv), 5.2(a)(v), 5.2(a)(vi) and 5.2(a)(vii) shall survive the Financial Close and shall not be deemed to be merged thereon. The remaining representations and warranties contained in Section 5.2(a) shall be deemed to have merged on the Financial Close.

6. BACKGROUND INFORMATION

6.1 No Liability

- (a) Except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3, 16.4 and 16.5 neither the City nor any other City Party shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from the City or any other City Party, 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, Project Co or any Project Co Party.

6.2 No Warranty

- (a) Except as expressly provided in this Project Agreement, including Sections 6.4, 16.1, 16.2, 16.3, 16.4 and 16.5:
 - (i) neither the City nor any other City Party gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither the City nor any other City Party warrants that the Background Information represents all of the information in its possession or control (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 Project Co under this Project Agreement or under any of the Project Documents; and
 - (ii) neither the City nor any other City Party shall be liable to Project Co or any Project 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 Project Co or any Project Co Party any information, documents or data;
 - (B) to review or update the Background Information; or
 - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

6.3 No Claims

- (a) Project 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 6.4, 16.1, 16.2, 16.3, 16.4 and 16.5, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against the City or any City Party (whether in contract, tort or otherwise), including 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 Project Co be relieved from any of its obligations under this Project Agreement on any such grounds.

6.4 Technical Reports

- (a) The City agrees that, if as of Commercial Close, except as disclosed in any Background Information or as otherwise disclosed by the City or any City Party, or known by Project Co or any Project 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 the Technical 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 the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, such incorrect information shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.
- (b) For the purposes of Section 6.4(a), "to the actual knowledge of the City" means to the actual knowledge of the City Project Manager.

7. PROJECT DOCUMENTS

7.1 Project Documents

- (a) Project 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 Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project 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 Project 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.

7.2 Ancillary Documents

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 31.3, 43.5, 57.3 and 58.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
 - (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project 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, that materially adversely affect Project 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 7.2(a)(i),

without the prior written consent of the City, provided that, where consent is requested pursuant to Section 7.2(a)(i) or 7.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 7.2(a)(i) or 7.2(a)(iv) will not materially adversely affect Project 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 7.2(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Project Co Parties, including Section 57.3.

7.3 Changes to Lending Agreements and Refinancing

- (a) Subject to the terms of the Lenders' Direct Agreement, Project 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 Project 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 27 – Refinancing.

7.4 Compliance with Lending Agreements

- (a) Project 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 Project Co from performing its obligations under this Project Agreement or the Project Documents.

8. CITY RESPONSIBILITIES

8.1 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) cooperate with Project 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 Project Co's obligations under this Project Agreement;
 - (iii) acquire and give access to the Lands described in Schedule 33 – Lands, as amended from time to time, in accordance with the Commencement Dates and duration specified in the said Schedule;
 - (iv) make such payments to Project Co as are specifically provided for in this Project Agreement; and
 - (v) perform those additional obligations specifically provided for in this Project Agreement.
- (b) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of the City or any other counselor, officer, employee or official thereof in fulfilling its statutory or other functions under Applicable Law, and Project 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. Project Co further agrees that, subject to Section 37.1(b), it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of the City from time to time.
- (c) The City shall, and shall cause all the City Parties to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (d) [Intentionally deleted].
- (e) The City shall provide for the attendance of the requisite number of suitably qualified employees for the employee training to be provided by Project Co in accordance with the requirements of Schedule 15-2 – Design and Construction Requirements.
- (f) The City shall provide suitably qualified drivers and controllers to support the required commissioning activities in accordance with the requirements of this Project Agreement.

8.2 City Permits, Licences, Approvals and Authorizations

- (a) The City shall, at its own cost and risk:
- (i) except as otherwise provided in Schedule 32 – City Permits, Licences, Approvals and Authorizations, obtain on or before Financial Close, and, maintain, and, as applicable,

renew all City Permits, Licences, Approvals and Authorizations which may be required for the performance of the Project Operations;

- (ii) comply with all City Permits, Licences, Approvals and Authorizations, in accordance with their terms, and other Permits, Licences, Approvals and Authorizations to the extent obligations thereunder attributable to the City are not otherwise required be undertaken or assumed by Project Co hereunder; and
 - (iii) execute all documents which, under Applicable Law, only the City as a land owner or as a counterparty to a Third Party Access Agreement is entitled to execute and which are required to obtain, maintain or renew any City Permits, Licences, Approvals and Authorizations.
- (b) The City shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as the City may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable Project Co or any Project Co Party to obtain, maintain or renew any Project Co Permits, Licences, Approvals and Authorizations or to demonstrate compliance with any Permits, Licences, Approvals and Authorizations, provided that the City shall not be responsible for obtaining or for any delay in obtaining or for the failure of Project Co or any Project Co Party to obtain any Project Co Permits, Licences, Approvals and Authorizations, unless such delay or failure is caused by any act or omission of the City, any City Party or any other person for whom the City is responsible at law. For greater certainty, the City shall not be obligated to:
- (i) exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permits, Licences, Approvals and Authorizations; and
 - (ii) automatically grant Project Co Permits, Licences, Approvals and Authorizations for which it is the authorizing entity and will apply its usual procedures and criteria in considering applications from Project Co or any Project Co Party for such Project Co Permits, Licences, Approvals and Authorizations.
- (c) Notwithstanding the provisions of Section 9.4(a)(i), the City shall be responsible for all designations, assumptions, road closures, transfers and any other applicable requirements relating to the System 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 Project Co having, at its own cost, providing or causing to be provided such information, documentation, and technical or administrative assistance, as the City may request and as Project Co may reasonably be able to provide to enable the City to effect such requirements.

9. PROJECT CO RESPONSIBILITIES

9.1 Other Business

- (a) Project 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.

9.2 General

- (a) Project Co 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) perform all Project Operations:
 - (A) in compliance with Applicable Law;
 - (B) in compliance with all Permits, Licences, Approvals and Authorizations and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Authorizations;
 - (C) so as to satisfy the Output Specifications;
 - (D) in accordance with Good Industry Practice;
 - (E) in a manner consistent with the Integrated Management Systems and Integrated Management Plans, and the Project Co Proposal Extracts;
 - (F) in a timely and professional manner;
 - (G) with due regard to the health and safety of persons and property;
 - (H) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of the City or any City Party to comply with Applicable Law;
 - (I) subject to the other provisions of this Project Agreement, including as required to enable performance of the Project Operations, in a manner which will not impair the performance of the Governmental Activities; and
 - (J) in accordance with all other terms of this Project Agreement;
 - (iii) cooperate with the City in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of the City's obligations under this Project Agreement;
 - (iv) cooperate with the City in respect of the City's consultations with Third Party Land Interest Holders in relation to the Project and the Project Operations;
 - (v) [intentionally deleted];
 - (vi) immediately notify the City Representative to the extent that Project Co becomes aware of any defect in the Lands, the Existing Revenue Vehicles or the System Infrastructure;
 - (vii) enter into any Utility Agreements that may be required to complete the Works;

- (viii) coordinate with the City all Construction Activities relating to New Municipal Infrastructure forming part of the Works on those parts of the Lands affected by Third Party Access Agreements, including the provision of the Works Schedule, Progress Works Schedule and any updates to the Works Schedule or Progress Works Schedule relating to such New Municipal Infrastructure, so as to minimize, to the extent reasonably possible, the impact of Construction Activities on the City operations and services provided by the City to the public; and
- (ix) immediately notify the City upon the 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 Ministry of Labour or any other Governmental Authority in respect of the Project Operations.

9.3 Project Co Parties

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the appointment of any Project Co Party, and Project Co shall cause each Project Co Party, to the extent such Project Co Party performs or is specified hereunder to perform the Project Operations, to comply with the obligations of Project Co hereunder in the same manner and to the same extent as Project Co.

9.4 Project Co Permits, Licences, Approvals and Authorizations

- (a) Project Co shall, at its own cost and risk:
 - (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Authorizations which may be required for the performance of the Project Operations;
 - (ii) except for those obligations which are identified as the City obligations in Schedule 32 – Permits, Licences, Approvals and Authorizations, during the Project Term, perform all of the obligations of the City under the City Permits, Licences, Approvals and Authorizations (and for greater certainty, the Development Approvals) relating to the Project Operations;
 - (iii) comply with all Permits, Licences, Approvals and Authorizations in accordance with their terms; and
 - (iv) provide all security, including all letters of credit, that may be required in connection with any Project Co Permits, Licences, Approvals and Authorizations, provided that, if the City is able to obtain an exemption from such security on behalf of Project Co and with respect to the Project,
 - (A) Project Co shall provide to the City an accurate accounting of the costs and expenses avoided by Project 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 Project Co as a result of any such exemption from the Substantial Completion Payment.

- (b) Where Project Co Permits, Licences, Approvals and Authorizations have requirements that may impose any conditions, liabilities or obligations on the City or any City Party, Project Co shall not obtain, amend or renew (other than upon the same or better terms and conditions) such Project Co Permits, Licences, Approvals and Authorizations without the prior written consent of the City, provided that, and subject to the City's compliance with its obligations under Section 8.2(b), neither the City nor any City Party shall be responsible for obtaining or for the failure of Project Co to obtain any Project Co Permits, Licences, Approvals and Authorizations. The City shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on the City or any City Party by the requirements of any Project Co Permits, Licences, Approvals and Authorizations obtained with the City's consent under this Section 9.4(b).
- (c) The City shall provide Project Co with such information and administrative assistance as Project Co may reasonably request in relation to the Permits, Licences, Approvals and Authorizations. In respect of Section 9.4(a)(ii), the City shall, in a timely manner,
- (i) provide Project Co with relevant information and copies of notices received under the applicable City Permits, Licences, Approvals and Authorizations; and
 - (ii) subject to the provisions of this Project Agreement relating to Permits, Licences, Approvals and Authorizations, execute and renew any documents under the applicable City Permits, Licences, Approvals and Authorizations which Applicable Law dictates that only the City can execute and renew.
- (d) Project 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 Project 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 City Permits, Licences, Approvals and Authorizations or to demonstrate compliance with any Permits, Licences, Approvals and Authorizations, provided that Project Co shall not be responsible for obtaining or for any delay in obtaining or for the failure of the City to obtain any City Permits, Licences, Approvals and Authorizations, unless such delay or failure is caused by any act or omission of Project Co, any Project Co Party or any other person for whom Project Co is responsible at law.
- (e) With respect to the NCC FLUDA:
- (i) the City shall obtain the NCC FLUDA, but can only do so with Project Co's performance of the obligations set out in Section 9.4(e)(ii);
 - (ii) Project Co shall use commercially reasonable efforts to assist the City in obtaining the NCC FLUDA as required from time to time including, without limitation:
 - (A) the preparation and delivery of all Design Data in respect of the NCC FLUDA pursuant to Schedule 10 – Review Procedure;
 - (B) the preparation and delivery of Design Development Submittals and/or Construction Development Submittals pursuant to Section 20.3 that are reasonably necessary to obtain the NCC FLUDA;

- (C) the preparation and delivery of such other plans, specifications, agreements, documents and instruments in respect of the Design and Construction Works and/or the Maintenance Services and amendments thereto that are reasonably necessary to obtain the NCC FLUDA; and
 - (D) Project Co shall make changes to the Design Data as required by NCC to further assist the City in obtaining the NCC FLUDA and Project 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 FLUDA pursuant to Section 9.4(a); and
 - (B) the City, in a timely manner, requires Project 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 Project Co under this Project Agreement, then such change or obligation shall result in a Variation subject to and in accordance with Schedule 21 – Variation Procedure.
- (f) If, prior to the Scheduled Substantial Completion Date, the City fails to issue to Project Co a final determination (a granting, conditional granting, or refusal) in respect of a Listed Project 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 32 – Permits, Licences, Approvals and Authorizations for the applicable Listed Project 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 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event, provided that:
- (i) the applicable Project Co Permit, Licence, Approval or Agreement is a Listed Project Co PLAA;
 - (ii) Project Co has fulfilled all obligations pursuant to Applicable Law, in accordance with any deadline applicable to the Listed Project 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 Project Co PLAA;
 - (iii) Project Co submitted the applicable Listed Project 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) Project Co’s application for the Listed Project Co PLAA and Project Co’s responses to all questions or concerns posed by the City were in accordance with Good Industry Practice.

- (g) For clarity, Section 9.4(f) does not entitle Project Co to a Delay Event or a Compensation Event,
- (i) in the event that the City’s final determination on a Listed Project Co PLAA is made in a timely way, pursuant to the applicable City PLAA Deadline, but is not favourable to Project Co or Project Co disagrees with the substance of the final determination;
 - (ii) in the event that the City fails to issue to Project Co a final determination in respect of a Permit, Licence, Approval or Authorization that is not explicitly listed as a Listed Project Co PLAA; or
 - (iii) with respect to,
 - (A) Permits, Licences, Approvals or Agreements that are related to, but not explicitly included on, the Listed Project Co PLAAs; or
 - (B) the Traffic and Transit Management Plan.
- (h) Project Co shall, at its own cost and risk, provide to the City a system to track the status of each Listed Project Co PLAA through every stage of preparation, submission and approval (the “**Listed PLAA Tracking System**”). More specifically, such Listed PLAA Tracking System shall:
- (i) be kept updated on a daily basis and be available to the City in real time 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 Project Co PLAA application is submitted; and
 - (iii) include a feature that highlights to the City each outstanding applicable Listed Project 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 32 – Permits, Licences, Approvals and Authorizations for the applicable Listed Project Co PLAA;
 - (B) **[REDACTED]**% of the number of Business Days designated for a final determination by the City in Appendix A to Schedule 32 – Permits, Licences, Approvals and Authorizations for the applicable Listed Project Co PLAA; and
 - (C) 5 Business Days prior to the expiration of the City PLAA Deadline.
- (i) Project Co shall submit documentation on the proposed design, functionality, and usage of the Listed PLAA Tracking System to the City Representative in accordance with Schedule 10 – Review Procedure no later than 60 days after Financial Close.
- (j) In addition, Project Co shall provide written notice to the City Representative with respect to any outstanding Listed Project Co PLAA when it reaches the milestone triggers outlined in Section 9.4(h)(iii) above.

- (k) With respect to any failure to issue to Project Co a final determination in respect of a Listed Project Co PLAA prior to the expiration of the relevant City PLAA Deadline, Project Co shall not be entitled to the Delay Event or Compensation Event pursuant to Section 38.1(a)(xx) unless the Listed PLAA Tracking System as described in Section 9.4(g) is functional and available to the City, provides notice to the City of the milestone described in Section 9.4(h)(iii), and contains accurate information as to the status of the applicable Listed Project Co PLAA at all material times.

9.5 Safety and Security

- (a) During the Construction Period and following Final Completion solely in relation to Construction Activities, Project Co shall:
- (i) comply with the health and safety requirements in Schedule 11 – Integrated Management System and the Construction Safety Management Plan;
 - (ii) keep the Site, the New Municipal Infrastructure and the System Infrastructure in a safe and orderly state, as appropriate in accordance with the Construction Safety Management Plan and Good Industry Practice, to avoid danger to persons on the Site (including occupants and users of Lands affected by Third Party Access Agreements), on the New Municipal Infrastructure and on the System Infrastructure, and in the immediate vicinity of the Site (including New Municipal Infrastructure on those parts of the Lands affected by Third Party Access Agreements) and System Infrastructure;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice to maintain and secure the Site, New Municipal Infrastructure and System Infrastructure to prevent access of any persons or creatures not entitled to be there once Project Co has been granted access to the Site or has commenced Works on the New Municipal Infrastructure and System Infrastructure;
 - (iv) comply, and cause each Project Co Party to comply, with Applicable Law relating to health and safety, including the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
 - (v) with respect to the Works, cause a COR-Certified Construction Project Co Party or, prior to receipt of COR Certification, a COR-Qualified Construction Project Co Party, to perform, all of the obligations of the "constructor", and indemnify the City and each City Party against any and all of the liabilities of the "constructor", under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
 - (vi) provide the City with a certificate of good standing from WSIB or any successor thereto once every 90 days from Financial Close until Final Completion, and from Final Completion until the Termination Date, at the request of the City Representative from time to time; and
 - (vii) For clarity, subject to Project Co warranty obligations relating to New Municipal Infrastructure as set out in the Output Specifications and Project Co obligations relating to the condition of the Lands within or upon which the New Municipal Infrastructure has

been constructed, following the delivery of the Final New Municipal Infrastructure Works Acceptance Certificate, Project Co's obligations under this Section 9.5 with respect to the New Municipal Infrastructure shall terminate and be of no further force or effect.

- (b) During the Maintenance Period, Project Co shall:
- (i) cooperate with the City, the Operator, and any Governmental Authority, as appropriate, with a view to securing and protecting the security of the System Infrastructure and protecting the security of System Users;
 - (ii) notify the City of any breach of security or potential breach of security on or off the System Infrastructure of which Project Co is aware;
 - (iii) cooperate with the City, the Operator, any Governmental Authority and the Emergency Service Provider in relation to the planning, organisation and control of extraordinary Passenger movements resulting from the holding of special events as contemplated pursuant to the Output Specifications;
 - (iv) cooperate with any special enquiries or investigations carried out by the City, the Operator, Emergency Service Providers or any Governmental Authority as a result of accidents, incidents or changes in Applicable Law and shall promptly provide to the City, the Emergency Service Providers and any Governmental Authority (as the case may be) all information, resources and facilities within its control which are reasonably required for such enquiries or investigations;
 - (v) comply with the Safety Management Plan and Emergency Response Plan;
 - (vi) cooperate with the Operator and follow the safety and security instructions set out in the Capital Railway Rules and the Standard Operating Procedures, including any verbal instructions by individuals authorized in accordance with the LRT Rules and Standard Operating Procedures, and comply with all requirements set out in the Output Specifications related to safety and security;
 - (vii) in an Emergency situation or when an urgent security matter arises in respect of the safety or security of the System Infrastructure or the System Users, take instruction from the Operator and the City with respect to maintaining the security and safety of the System Infrastructure and the System Users; and
 - (viii) with respect to the Maintenance and Rehabilitation Services, cause a Maintenance and Rehabilitation Project Co Party with an accredited ISO 45001 safety management system or, prior to receipt of accreditation, a Maintenance and Rehabilitation Project Co Party with a safety management system compliant with ISO 45001, to perform all Maintenance and Rehabilitation Services and indemnify the City and each City Party against any and all of the liabilities of the "constructor", under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto at any time that Project Co is acting as a "constructor" on the Site following Substantial Completion.

9.6 Health and Safety Certification

- (a) Project Co shall, at its own cost and risk, at all times during the performance of the Works cause a COR-Qualified Construction Project Co Party or COR-Certified Construction Project Co Party, as the case may be, to:
- (i) to the extent a COR-Qualified Construction Project Co Party has not obtained COR Certification prior to Financial Close,
 - (A) use best efforts to obtain its COR Certification no later than eighteen months following Financial Close. In the event that the City is satisfied, in its sole discretion, that the COR-Qualified Construction Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 9.6 and the COR-Qualified Construction Project Co Party has not obtained COR Certification by the end of such eighteen month period, then the City shall establish a time period during which the COR-Qualified Construction Project 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 Project Co Party has obtained its COR Certification,
 - (ii) once the COR-Qualified Construction Project Co Party is certified (hereafter referred to as a “**COR-Certified Construction Project 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 Project Co Party) or COR Certification (if a COR-Certified Construction Project Co Party), in accordance with its terms.
- (b) Project Co shall, at its own cost and risk, at all times beginning on the date the Substantial Completion Countdown Notice is issued until the end of the Project Term cause the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party or ISO 45001 Accredited Maintenance and Rehabilitation Project Co Party to:
- (i) to the extent a ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party has not obtained its ISO 45001 Accreditation prior to the date the Substantial Completion Countdown Notice is issued, use best efforts to obtain its ISO 45001 Accreditation no later than twelve months following the date the Substantial Completion Countdown Notice is issued. In the event that the City is satisfied, in their sole discretion, that the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party has used best efforts to obtain its ISO 45001 Accreditation in accordance with this Section 9.6 and the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party has not obtained its ISO 45001 Accreditation by the end of such twelve month period, then the City shall establish a time period during which the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party shall obtain its ISO 45001 Accreditation, which time period shall not be less than six months;

- (ii) once the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party is accredited (thereafter referred to as a “**ISO 45001 Accredited Maintenance and Rehabilitation Project Co Party**”), maintain in good standing, and, as applicable, renew its ISO 45001 Accreditation; and
 - (iii) comply with all requirements of its ISO 45001 Accreditation in accordance with its terms.
- (c) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Project Operations:
- (i) a COR-Qualified Construction Project Co Party or a ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party fails to obtain its COR Certification or ISO 45001 Accreditation in accordance with this Project Agreement and the City determines that the failure to obtain the COR Certification or ISO 45001 Accreditation is as a result of such COR-Qualified Construction Project Co Party or such ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party, as the case may be, not using best efforts to obtain such certification or accreditation and the City delivers a Notice to Project Co indicating that a COR-Qualified Construction Project Co Party or a ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party, as the case may be, has failed to obtain its COR Certification or ISO 45001 Accreditation in accordance with this Project Agreement; or
 - (ii) a COR-Qualified Construction Project 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; or
 - (iii) a COR-Certified Construction Project Co Party or an ISO 45001 Accredited Maintenance and Rehabilitation Project Co Party, as the case may be, fails to maintain its COR Certification or its ISO 45001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement;
- (each, an “**H&S Certification Default Event**”); or
- (iv) the City delivers a Notice to Project Co indicating that the City has reasonable cause to believe that a COR-Qualified Construction Project 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 Project Co indicating that the City has reasonable cause to believe that a COR-Certified Construction Project Co Party or ISO 45001 Accredited Maintenance and Rehabilitation Project Co Party, as the case may be, will fail to maintain its COR Certification or ISO 45001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement,

Project 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 or 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 90 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, Project Co shall take, and shall cause the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party, or the ISO 45001 Accredited Maintenance and Rehabilitation Project 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 5 Business Days from the date on which such request is made by the City;
 - (C) no later than 5 Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection or H&S Maintenance Inspection, as the case may be, in accordance with Section 13(b); and
 - (D) arrange to have conducted an H&S Construction Re-Inspection or H&S Maintenance Re-Inspection, as the case may be in accordance with Section 13(d), if required, or
- (vii) within 10 Business Days of receipt of the Notice from the City under 9.6(c)(iv) or 9.6(c)(v):
 - (A) produce and deliver to the City Representative a report identifying the manner in which the COR Certification or 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 or 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 require any amendments or

revisions to be made to the H&S Certification Maintenance Plan, Project 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 H&S Certification Maintenance Plan not more than 10 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 or H&S Maintenance Inspection, as the case may be, in accordance with Section 13(b); and
- (D) arrange to have conducted an H&S Construction Re-Inspection or H&S Maintenance Re-Inspection, as the case may be, in accordance with Section 13(e)(ii), if required.

9.7 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 license rights of use and access to Project Co on and over the Lands pursuant to Section 14 nor a breach of any other obligation, representation or warranty under this Project Agreement.
- (b) Except as set out in this Project Agreement, throughout the Construction Period, the management of any Protesters or Trespassers shall be the responsibility of Project Co in respect of the Site, to the extent such management is not otherwise the responsibility of the Police Service.
- (c) During the Maintenance Period, if Protesters or Trespassers occupy the System or access to the System is prevented or interfered with by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to assist the City in managing such Protesters or Trespassers and promptly notify the City Representative of such occurrence. For clarity, during the Maintenance Period, Project Co shall be responsible for the management of any Protesters or Trespassers on the New Walkley Yard to the extent such management is not otherwise the responsibility of the Police Service.
- (d) Project Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Site, and/or the New Walkley Yard, provided that if Project Co does elect to exercise any such legal remedy, Project 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) Project 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) Project Co shall not by virtue of this Section 9.7(d) 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.
- (e) Project Co may request the assistance of the City (at the cost of Project Co) to remove Protesters or Trespassers during the periods, and for the Site, facilities or infrastructure set out in Section 9.7(b) if Project Co demonstrates to the City's reasonable satisfaction that:
- (i) Project Co is pursuing legal remedies available to it to remove the Protesters or Trespassers (provided that for this purpose Project 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 or the Maintenance and Rehabilitation Services (as the case may be) that Project Co is unable to mitigate.

Following such request, the City shall notify Project 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 Project Co and, to the extent that such assistance can be lawfully provided, the City shall provide such assistance (at the cost of Project Co) to the extent it is, in the discretion of the City, reasonable and appropriate in the circumstances to do so.

9.8 Additional Works and Third Party Works

- (a) Project Co shall, having regard to Project Co's obligations set out in Section 15, arrange and carry out all coordination of the Project Operations 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) The City may assign the 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 Project Co. For clarity, the City may, in its sole discretion, assign such responsibilities to Project Co during either or both of the Construction Period or Maintenance Period.
- (d) In connection with the Additional Works, the City shall,
 - (i) cause Additional Contractors to comply with the instructions of Project 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,
 - (A) the Works during the Construction Period; and
 - (B) the Maintenance and Rehabilitation Services during the Maintenance Period;

- (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 9.8(e) and all directions of Project 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 Project 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 Project 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 Project Co pursuant to this Section 9.8, Project 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 or Maintenance and Rehabilitation Services, as applicable, to be performed under this Project Agreement;
 - (ii) 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 Substantial Completion and, exercised in a manner consistent with the said Act, at any time that Project Co is acting as a 'constructor' on the Site following Substantial Completion;
 - (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 Project 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 Substantial Completion, if:
 - (i) any Additional Contractors cause any damage to the Works;

- (ii) Project 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 Project Co; or
- (iii) subject to the performance by Project Co of its obligations under this Section 9.8, if Project 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 38 be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event.

- (g) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 26 - Dispute Resolution Procedure provided that the Additional Contractors and the City have made commercially reasonable efforts to ensure that provisions similar to Schedule 26 – Dispute Resolution Procedure have been included in the contracts between the City and the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any Additional Contractor whose contract with the City contains a similar agreement to arbitrate.
- (h) In connection with the Additional Works, Project Co may request a Variation as follows:
 - (i) Project 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 Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice; or
 - (B) reasonably expected to have a material negative consequence on Project Co’s ability to perform any of the Project Operations;
 - (ii) If the City assigns responsibilities to Project Co pursuant to Section 9.8(c) and Section 9.8(e) after Substantial Completion, and Project Co demonstrates to the City, acting reasonably, that it is unable to carry out such responsibilities without adding additional resources to the resources providing the Maintenance and Rehabilitation Services at the relevant time, Project Co shall have a period of 10 Business Days following Notice from the City of such an assignment of responsibilities to request a Variation in respect of the cost of such additional resources;
 - (iii) If Project Co has made a request for a Variation in accordance with Section 9.8(h)(i) or Section 9.8(h)(ii), the City shall, within 10 Business Days of such request, either issue a Variation Enquiry or give Notice to Project Co that they do not agree that a Variation is required;
 - (iv) Either Party may refer the question of whether a Variation is required as the result of a warranty risk or risk in the performance of the Project Operations or, whether Project Co

has to add additional resources to the resources providing the Maintenance and Rehabilitation Services at the relevant time for resolution in accordance with Schedule 26 - Dispute Resolution Procedure; and

- (v) If the City has, under Section 9.8(h)(iii), given Notice to Project Co that it does not agree that a Variation is required, the City shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 21 - 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 Project Co's ability to perform any of the Project Operations and Project 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 Project Co shall not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.

9.9 Adjacent Developments

- (a) Project Co shall having regard to this Section 9.9, review all planning and development applications received from the City in connection with proposed Adjacent Developments.
- (b) Project Co shall permit the developer of an Adjacent Development to post or affix signage as and if required by the City and in locations required by the City, in connection with such Adjacent Development application.
- (c) At the City's request, Project Co shall provide to the developer of an Adjacent Development all relevant Project documentation in respect of the design and construction of elements of the System Infrastructure that may be impacted by the proposed 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 Project Co, each acting reasonably.
- (d) All work and activities undertaken by Project Co or any Project Co Party pursuant to this Section 9.9 shall be at Project Co's own cost, provided that in the event that more than **[REDACTED]** Adjacent Development applications are referred to Project Co by the City in a calendar year, then Project 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.

9.10 System Extension

- (a) The City shall be entitled to carry out or procure the carrying out of any System Extension at any time during the Project Term and Project Co shall not be entitled to object or prevent the carrying out of any such System Extension.
- (b) Project Co shall make available those parts of the System Infrastructure to enable an Extension Contractor to connect the System Infrastructure with the System Extension.
- (c) Project Co and the City shall comply with Schedule 36 – System Extension in connection with any System Extension considered by the City at any time during the Project Term.

9.11 Revenue Vehicle Supply Contract

- (a) On Financial Close, Project Co shall cause the Construction Contractor to execute the Revenue Vehicle Supply Contract substantially in the form attached as Schedule 39 hereto (“**Revenue Vehicle Supply Contract**”) and thereafter shall execute and deliver such supporting documentation as may be reasonably required by the City from time to time with respect to the Revenue Vehicle Supply Contract. For clarity, Project Co acknowledges and agrees that:
 - (i) Subject to Section 9.11(b), any and all costs associated with the performance of the obligations under the Revenue Vehicle Supply Contract shall be at Project Co’s cost; and
 - (ii) any and all obligations under the Revenue Vehicle Supply Contract are included in and form part of the Works.
- (b) The RVSC Fixed Cost Amount shall be reviewed, certified, financed and paid for in accordance with this Section 9.11. Project Co shall not obtain financing for the RVSC Fixed Cost Amount.
- (c) The City shall open the RVSC Cash Allowance Account on or before Financial Close and shall manage the RVSC Cash Allowance Account in accordance with this Section 9.11.
- (d) The cash flow process applicable to the RVSC Cash Allowance Account will be as follows:
 - (i) the City will deposit the applicable portion of the RVSC Fixed Cost Amount relating to the particular RVSC Milestone to be achieved into the RVSC Cash Allowance Account five (5) Business Days prior to the dates and in the amounts set out in the RVSC Cash Flow at Financial Close;
 - (ii) the City will hold and manage all monies in the RVSC Cash Allowance Account;
 - (iii) without derogating from the City’s obligations pursuant to Section 47.1(a), if, at the earlier to occur of (i) Final Completion, (ii) the Termination Date or (iii) the City’s exercise of its termination right under Section 43.6, there exists a positive balance in the RVSC Cash Allowance Account, such balance will be the property of the City; and
 - (iv) the Parties, together with the Construction Contractor and the Revenue Vehicle Supplier shall review the operation of the RVSC Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.

- (e) Upon the achievement of any RVSC Milestone, Project Co shall provide to the City Representative and the Independent Certifier a copy of the request for payment approval (each, an “**RVSC Request for Payment Approval**”) prepared by the Revenue Vehicle Supplier that includes the following information:
 - (i) details of all invoices and certifications relating to any RVSC Milestone that are due for payment, including relevant supporting documentation; and
 - (ii) evidence that all deliverables (including without limitation, the applicable Revenue Vehicles) which are required to have been provided in accordance with the Revenue Vehicle Supply Contract have, as of the RVSC Milestone, been duly delivered in accordance with the Revenue Vehicle Supply Contract.
- (f) The Independent Certifier shall, within 10 Business Days of receipt of a RVSC Request for Payment Approval, advise Project Co, in writing, whether or not payment of the applicable RVSC Milestone set out in such RVSC Request for Payment Approval is approved.
- (g) The Independent Certifier shall only be permitted to withhold its approval if the Independent Certifier determines that the RVSC Request for Payment Approval does not contain the information that the Independent Certifier requires, acting reasonably, under Section 9.11(e).
- (h) If the Independent Certifier withholds its approval pursuant to Section 9.11(f) in respect of any invoice submitted as part of any RVSC Request for Payment Approval and the Independent Certifier subsequently receives the information that the Independent Certifier requires under Section 9.11(e), the Independent Certifier shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, the Independent Certifier’s approval of the applicable RVSC Milestone set out in the subject RVSC Request for Payment Approval.
- (i) If the Independent Certifier approves the payment of the invoices set out in an RVSC Request for Payment Approval pursuant to Section 9.11(f) and each of Project Co and the Construction Contractor approves the RVSC Request for Payment Approvals, acting reasonably, the City shall release (and Project Co and the Construction Contractor shall be deemed to have directed the release of) the applicable portion of the RVSC Fixed Cost Amount from the RVSC Cash Allowance Account for payment to the Revenue Vehicle Supplier in accordance with Part 1, Section 12.2 of the Revenue Vehicle Supply Contract.
- (j) To the extent payment for any invoice set out in a RVSC Request for Payment Approval, which is approved by the Independent Certifier pursuant to Section 9.11(f), is not made and received by Project Co due to a Delay Event occurring after the Revenue Vehicle Supplier has achieved the relevant RVSC Milestone but prior to invoicing or payment, or a Delay Event which generally does not prevent or delay achievement of the relevant RVSC Milestone by Revenue Vehicle Supplier, such payment requested by Project Co, shall be due and payable for all purposes of this Project Agreement on the relevant date, otherwise provided for and that non-payment of the amount that would have been required to be paid, but for this Section 9.11(j), will be a non-payment for purposes of Section 44.1(a)(i).

10. REPRESENTATIVES

10.1 The City Representative

- (a) Subject to the limitations set out in Section 10.1(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 Project Co from time to time.
- (b) The City may, from time to time by written Notice to Project 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 Project 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, Project Co and the Project 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 Project Co and the Project 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 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project 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 Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

10.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of the City.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written Notice to the City, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek the City's consent in accordance with Section 10.2(b) if such alternative Project 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 Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and the City and the City Representative shall not be required to determine whether authority has in fact been given.

- (d) The Project 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 10.2(d), unless otherwise notified in writing, the City and the City Representative shall be entitled to treat any act of the Project Co Representative which is explicitly authorized by this Project Agreement as being authorized by Project Co, and the City and the City Representative shall not be required to determine whether authority has in fact been given.

10.3 Communications to Representatives

- (a) At the time that a Party appoints or changes the appointment of the City Representative or the Project 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.

10.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 - Key Individuals. Project 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 Project Co or a Project Co Party) for the whole of, but not subsequent to the Construction Period. Project Co or a Project 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 Project Co fails to comply with this Section 10.4(a), Project Co shall pay to the City the liquidated damages amount, if any, ascribed for such Key Individual in Schedule 9 – Key Individuals. The Parties agree that the liquidated damages set out Schedule 9 – Key Individuals are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of Project Co’s failure to provide the applicable Key Individual. For clarity, Project Co and the Project Co Parties’ reasonable commercial efforts, in accordance with this Section 10.4(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, only the following reasons will be considered beyond the control of Project Co or a Project Co Party: death; short term disability; or long term disability or any other reason in the opinion of the City, acting reasonably (Project 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 Project Co).
- (b) The individuals who are critical to the performance of the Maintenance and Rehabilitation Services are identified in Schedule 9 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons are involved in the Maintenance and Rehabilitation Services in the capacity set out in Schedule 9 - Key Individuals at the outset of the Maintenance Period (unless such Key Individuals are not available for reasons beyond the control of Project Co or a Project Co Party). Project Co shall ensure that such Key Individuals are replaced over the duration of the Maintenance Period in a planned and orderly fashion and in consultation with the City and with explicit identification of each Key Individual’s length of time as a Key Individual during the Maintenance Period. Once a Key Individual has been identified and approved by the

City as part of the planned and orderly replacement of Key Individuals pursuant to this Section 10.4(b), Project Co or a Project Co Party shall not, for the planned period of the Maintenance and Rehabilitation Services, 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 Maintenance and Rehabilitation Services. For the purposes of this section, only the following reasons will be considered beyond the control of Project Co or a Project Co Party: death; short term disability; or long term disability or any other reason determined in the opinion of the City, acting reasonably (Project 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 Project Co).

- (c) Subject to Project Co's obligations to ensure that Key Individuals remain involved in the Works and in the Maintenance and Rehabilitation Services as set out in Sections 10.4(a) and 10.4(b), if it becomes necessary for Project Co to replace any individual identified in Schedule 9 - Key Individuals, Project 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. Project 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 Project Co is compliant with Sections 10.4(a), 10.4(b) and 10.4(d) 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 Project 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 Project Co to replace any such Key Individual, Project 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 10.4(c) are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of Project Co's failure to provide the applicable Key Individual.
- (d) 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 Project Co (including a detailed explanation of the reasons for such determination), and, within 60 days after receipt by Project Co of such Notice, Project 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.

11. WORKS COMMITTEE

11.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the "**Works Committee**") consisting of:
- (i) six representatives appointed by the City from time to time, one of whom will be the City Representative; and
 - (ii) the following five representatives appointed by Project Co:

- (A) the Project Co Representative;
 - (B) one representative of the Construction Contractor;
 - (C) the Design Build Director;
 - (D) the Director of Communications and Stakeholder Engagement; and
 - (E) such other representative appointed by Project Co from time to time.
- (b) The Independent Certifier shall be entitled, but not required, to attend meetings as a non-voting member 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.
- (c) The City Representative shall be the chairperson of the Works Committee.

11.2 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. The Works Committee shall interface with the Maintenance Committee as and when required.
- (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 Project 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 Project Co;
 - (vii) any Proceeding At Risk Matters referred to the Works Committee in accordance with Section 11.6.
 - (viii) any community and media relations issues in accordance with Schedule 18 - Communications and Stakeholder Engagement Obligations;
 - (ix) any issues related to Schedule 7 – Mobility Matters; and

- (x) any other issues pertaining to the Works.
- (c) Subject to Section 11.2(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 26 - 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 Key Works Milestones set out in the Works Schedule, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
 - (iii) any Variation;
 - (iv) any change that may materially adversely affect Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
 - (v) 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.

11.3 Term of Works Committee

- (a) Unless otherwise agreed by the Parties, the Works Committee shall operate only until the Final Completion Date.

11.4 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 Project Co. The City will use commercially reasonable efforts to deliver prior written Notice of any such replacements to Project Co. Project Co may replace any of its representatives on the Works Committee with the prior written consent of the City.

11.5 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 Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representative or the City Representative 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 five 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 at the Site in the City of Ottawa or in any other location in 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 of the City (one of whom shall be the City Representative) and the three representatives of Project Co 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 Project Co. Project Co shall circulate copies of such minutes within five Business Days of the holding of the meeting or the making of the recommendation or decision. Unless the City notifies Project Co within five Business Days of receipt of the minutes that the City disagrees with the contents of the minutes, the City and Project Co shall be deemed to have approved such minutes. Project 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.

11.6 Proceeding At Risk

- (a) If at any time:
 - (i) in the reasonable opinion of the City, Project Co is performing the Works (excluding for greater certainty, the supply of the New Revenue Vehicles) in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion; or
 - (ii) the City Representative has noted a Works Submittal as "CRITICAL COMMENT" in accordance with Schedule 10 – Review Procedure (each of the matters described in clauses (i) and (ii) of this Section 11.6(a), a "**Proceeding At Risk Matter**");

- then the City may issue to Project 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 Project Co to deliver any relevant Design Data and any other information reasonably required by the City from Project Co to review the Proceeding At Risk Matter.
- (b) Following the issuance of a Proceeding At Risk Notice, the City Representative and the Project 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 Project Co of a Proceeding At Risk Notice, Project Co shall deliver a response to the City and each member of the Works Committee, which shall include:
 - (i) the Design Data and any other information reasonably requested by the City in the Proceeding At Risk Notice;
 - (ii) Project 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 Project Co’s opinion regarding the Proceeding At Risk Matter; and
 - (iv) Project Co’s proposal to rectify the Proceeding at Risk Matter.
 - (d) Within 5 Business Days after receipt by the City of the response from Project Co pursuant to Section 11.6(c), the City shall notify Project Co if the City requires any additional information from Project Co. Project Co shall provide such additional information to the City, 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 of the Proceeding At Risk Notice, deliver to each of the City and Project 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 11.6(c) and, if applicable, Section 11.6(d), and in any event, no later than 35 Business Days after receipt by Project 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 5 Business Days after the PAR Meeting and, in any event, no later than 40 Business Days after receipt by Project Co of the Proceeding At Risk Notice (the “**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 11.6(e) confirms that the City acted reasonably in delivering the Proceeding At Risk Notice, Project 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 Project Co is Proceeding At Risk, together with the relevant information supporting the City’s opinion that Project 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 26 – Dispute Resolution Procedure.
- (i) The Proceeding At Risk Notice, review, and comments made during the process set out in this Section 11.6 are for general conformity to the obligations and requirements of this Project Agreement, and any such notice, review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and the 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 26 – Dispute Resolution Procedure that Project Co should not have been deemed to be Proceeding at Risk under Section 11.6(g), the City shall (i) promptly notify the Lender’s Agent that it is withdrawing its notice given pursuant to Section 11.6(g), if applicable, and (ii) reimburse Project 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.

12. MAINTENANCE COMMITTEE

12.1 Establishment

- (a) The Parties shall, not later than 18 months prior to the Scheduled Substantial Completion Date, establish a committee (the “**Maintenance Committee**”) to serve until the Termination Date consisting of:
 - (i) 4 representatives appointed by the City from time to time, one of whom may be the Operator;
 - (ii) 1 senior representative of Project Co; and
 - (iii) 1 senior representative of the Maintenance and Rehabilitation Contractor.
- (b) Members of the Maintenance Committee may invite, on prior Notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Maintenance Committee.
- (c) One of the representatives of the City shall be the chairperson of the Maintenance Committee.

12.2 Function and Role

- (a) The Maintenance Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Operations, both prior to and during

the Maintenance Period. The Maintenance Committee shall interface with the Works Committee as and when required.

- (b) The Maintenance Committee shall be responsible for receiving and reviewing all matters related to the System Infrastructure, both prior to and during the Maintenance Period, including:
 - (i) any joint review of the System Infrastructure and the Output Specifications;
 - (ii) any performance issues;
 - (iii) any special matter referred to the Maintenance Committee by the City or Project Co;
 - (iv) any community and media relations issues in accordance with Schedule 18 - Communications and Stakeholder Engagement Obligations; and
 - (v) any other issues pertaining to the Project Operations (excluding the Works).
- (c) Subject to Section 12.2(d), any unanimous decision of the Maintenance Committee shall be final and binding on the Parties. If the Maintenance Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.
- (d) The Maintenance 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 Variation;
 - (iii) any change that may materially adversely affect Project Co's ability to perform the Maintenance and Rehabilitation Services or the performance by the relevant parties of any Governmental Activities; or
 - (iv) 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.

12.3 Replacement of Committee Members

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

12.4 Procedures and Practices

- (a) The members of the Maintenance Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Maintenance Committee as they consider appropriate from time to time;

- (ii) invite to any meeting of the Maintenance Committee such other persons as the members of the Maintenance Committee may agree;
 - (iii) exclude from any meeting of the Maintenance Committee such persons as the members of the Maintenance Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Maintenance Committee.
- (b) Once established, the Maintenance Committee shall meet at least once each month during the Maintenance Period, unless otherwise agreed by the members of the Maintenance Committee or the Parties.
- (c) Any member of the Maintenance Committee may convene a special meeting of the Maintenance Committee at any time. Special meetings of the Maintenance Committee may be convened on not less than 5 Business Days' Notice to all members of the Maintenance 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 Maintenance Committee, the Maintenance Committee shall meet at the Site in the City of Ottawa or in any other location in Ontario. Meetings of the Maintenance 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 Maintenance Committee must attend in person at least once each calendar quarter.
- (e) One representative of Project Co, one representative of the Maintenance and Rehabilitation Contractor, and two representatives of the City shall constitute a quorum at any meeting of the Maintenance Committee. A quorum of members may exercise all the powers of the Maintenance Committee. The members shall not transact business at a meeting of the Maintenance Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Maintenance Committee, including those made by telephone or other form of communication, shall be recorded and maintained by the City. The City shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies the City within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, the City and Project Co shall be deemed to have approved such minutes. The City shall maintain a complete set of all minutes of the meetings of the Maintenance Committee and shall make such minutes available for inspection by Project Co during regular business hours.

13. INTEGRATED MANAGEMENT SYSTEM

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

- (b) Project Co shall cause (A) 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 9.6(c)(vi)(C) or 9.6(c)(vii)(C) (each, an “**H&S Construction Inspection**”), and (B) cause the Maintenance and Rehabilitation Contractor, at its sole cost and expense, to conduct an inspection of its facilities and its health and safety management systems on an annual basis commencing on the first anniversary of the Substantial Completion Date and thereafter until the end of the Project Term or as otherwise required in accordance with Sections 9.6(c)(vi)(C) or 9.6(c)(vii)(C), (each, an “**H&S Maintenance Inspection**”), which H&S Construction Inspection and H&S Maintenance Inspection shall:
- (i) be conducted by a Certified H&S Inspector;
 - (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 at the Site; and
 - (iii) during the performance of the Maintenance and Rehabilitation Services, include, at a minimum (A) a review of general compliance with all applicable Occupational Health and Safety Act (Ontario) requirements, and compliance with all safety manuals applicable to the provision of the Maintenance and Rehabilitation Services and (B) a review of the Maintenance and Rehabilitation Contractor’s job hazard analysis documentation relating to the provision of Maintenance and Rehabilitation Services.
- (c) Project 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 10 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 Project 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.
- (d) Project Co shall cause the results of each H&S Maintenance Inspection (such results referred to as the “**H&S Maintenance Inspection Report**”) to be delivered to the City and the Maintenance Committee not more than 10 Business Days from the date on which a H&S Maintenance Inspection is completed. Any H&S Maintenance Inspection Report arising from an H&S Maintenance Inspection shall be tabled and presented by Project Co for discussion by the Maintenance Committee at the next meeting of the Maintenance Committee that follows the date on which such H&S Maintenance Inspection Report was issued.
- (e) To the extent an H&S Construction Inspection Report or H&S Maintenance Inspection Report, as the case may be, discloses any non-compliance by the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the ISO 45001 Certified Maintenance and Rehabilitation Project Co Party, or the COR-Qualified Maintenance and Rehabilitation Project 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 Project Co to cause the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the COR-Qualified Maintenance and Rehabilitation Project Co Party and the ISO 45001 Certified Maintenance and Rehabilitation Project 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 or H&S Maintenance Inspection Report, as the case may be, to correct any such non-compliance, and Project Co shall cause the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the COR-Qualified Maintenance and Rehabilitation Project Co Party and the ISO 45001 Certified Maintenance and Rehabilitation Project 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 and H&S Maintenance Inspections, as the case may be, 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**”) or in the relevant H&S Maintenance Inspection Report (each an “**H&S Maintenance Re-Inspection**”), in each case, within 10 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;
- (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 10 Business Days from the date on which an 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 Project 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; and
- (iv) to cause the results of each H&S Maintenance Re-Inspection (such results referred to as the “**H&S Maintenance Re-Inspection Report**”) to be delivered to the City and the Maintenance Committee not more than 3 Business Days from the date on which an H&S Maintenance Re-Inspection is completed. An H&S Maintenance Re-Inspection Report arising from an H&S Maintenance Re-Inspection shall be tabled and presented by Project Co for discussion by the Maintenance Committee at the next meeting of the Maintenance Committee that follows the date on which such H&S Maintenance Re-Inspection Report was issued.

14. ACCESS TO THE LANDS

14.1 Access to Lands

- (a) Subject to this Section 14 and the provisions of Schedule 33 – Lands, including any restrictions on use and access set out in Schedule 33 – Lands, the City shall grant or have caused to be granted, and shall continuously grant or cause to be granted, to Project Co and Project Co Parties, non-exclusive license right of use and access to the Lands as are required by Project Co and Project Co Parties sufficient (subject to Project Co performing its obligations described in the Project Co Permits, Licences, Approvals and Authorizations and subject to the timing and extent of the grant of use and access to the Lands set out in Schedule 33 – Lands) to allow Project Co and Project Co Parties to perform those Project Operations to be performed on the Lands. The rights granted to Project Co pursuant to this Section 14.1(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 the Lands as set out in Schedule 33 – Lands.
- (b) Subject to Project Co’s obligation to comply with the other terms and conditions set forth in this Project Agreement and the other Project Documents, Project Co shall ensure that each Project Co Party shall at all times, when entering the Lands, act in a manner consistent with the obligations of Project Co under the Project Agreement.
- (c) In consideration for the use and access granted pursuant to Section 14.1(a), Project Co shall provide the Project Operations subject to and in accordance with this Project Agreement.
- (d) Without derogating from any of the City’s rights hereunder, in particular, its rights of access to the Lands prior to the Substantial Completion Date for the purposes of any City Commissioning, and subject to any restrictions set out in Schedule 33 – Lands, the City acknowledges that, in respect of the Project Operations, Project Co and the Project Co Parties require, and the City shall provide access to the Lands without material interference by the City or any City Party for such period of time identified in Sections 14.1(a) applicable thereto.
- (e) None of the rights granted pursuant to this Section 14.1 shall:
- (i) grant access to 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 are obtained after Commercial Close and which are intended to benefit the Lands, to the extent the same are necessary for the Project Operations or exceed any restrictions set out in Schedule 33 - Lands;
 - (ii) grant access to any facilities or infrastructure of the City, Utility Companies or any other third parties, except as set out in Schedule 33 – Lands (which access, if any, is subject to Section 14.2); or
 - (iii) except as otherwise expressly provided in this Project Agreement, be interpreted as permitting Project Co to alter, damage, remove or destroy any structure that may be extending over or encroaching upon the Lands from adjoining properties without the prior written consent of the City, such consent not to be unreasonably withheld it being acknowledged that Project Co will be required to provide the City with reasonable prior written notice of any such interference or encroachment encountered during the course of

the Works and to achieve a consensus with the City as to the means to address such interference or encroachment.

- (f) The use and access rights provided in this Section 14.1 shall automatically terminate as of the Termination Date, save and except for the earlier termination of the use and access rights specified in Schedule 33 – Lands.
- (g) For greater certainty, the use and access rights provided in this Section 14.1 shall not entitle Project Co or any Project Co Party to extract any mineral from the Lands for use in the Project Operations.
- (h) The City shall acquire use of and access to the Lands described in Schedule 33 – Lands on or prior to the applicable commencement date for access set out in Schedule 33 – Lands. The City shall provide Notice to Project Co of the commencement of access rights to the Lands as such access is obtained by the City.

14.2 Non-exclusive License to Lands / Development of Lands

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project 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 System Infrastructure and the New Municipal Infrastructure (in each case on the Lands) without the prior consent of Project Co, including for the purposes of carrying out the Governmental Activities and the Other Works. In exercising its rights Project Co shall not, and shall require that the Project Co Parties shall not, except as permitted under this Project Agreement, disrupt the performance of the Governmental Activities or the Other Works.
- (b) Without limiting Section 14.2(a), Project Co acknowledges that the City may, from time to time, use or develop (including by way of subdivision), or permit the use or development of, or dispose of, portions of the Lands (or interests in the Lands), other than those portions of the Lands (or interests in the Lands) necessary for the performance of the Project Operations. To the extent that such use, development or disposition materially adversely interferes with Project Co's license rights hereunder or materially adversely interferes with Project Co's ability to perform the Project Operations, such use, development or disposition shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation. For greater certainty, but without limiting the generality of the foregoing, Project Co acknowledges and agrees that certain of the Lands, shall be subject to the restrictions set out in Schedule 33 – Lands.
- (c) Project Co shall be solely responsible to arrange all access to lands that it requires to access System Infrastructure or New Municipal Infrastructure not otherwise provided for in accordance with Schedule 33 – Lands and any Permits, Licences, Approvals and Authorizations. Project Co shall observe, perform and comply with all terms and conditions in Third Party Access Agreements applicable to the access, use and occupation of those parts of the Lands affected by Third Party Access Agreements and the performance of Project Operations on New Municipal Infrastructure or any component thereof.

14.3 Naming and Signage

- (a) Project Co acknowledges that the City reserves and retains,
 - (i) all rights to designate the name for the System Infrastructure, or any part thereof, and the New Municipal Infrastructure 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 System Infrastructure and the New Municipal Infrastructure; and
 - (iii) all rights, Trade-Marks, naming or branding regarding the System Infrastructure, or any parts thereof and the New Municipal Infrastructure.
- (b) Without limiting the City's rights pursuant to Section 14.3(a), with the prior written consent of the City, which may take into consideration any applicable governmental guidelines, including guidelines set out in Schedule 18 - Communications and Stakeholder Engagement Obligations and Schedule 33 – Lands, Project Co, the Project 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.

14.4 No Interest in Land, Facilities or Infrastructure

- (a) Project Co acknowledges and agrees that neither Project Co nor the Lenders shall acquire any estate, right, title or ownership interest in the Lands or any part of the System Infrastructure or the New Municipal Infrastructure or any other interest in land, facilities or infrastructure pursuant to this Project Agreement 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, shall at all times remain unencumbered by any interest of Project Co or the Lenders. Project Co and the Lenders shall have access to the Lands and the New Municipal Infrastructure under and subject to the licences and access rights granted under this Section 14 and the Lenders' Direct Agreement, respectively.

14.5 Non-Disturbance Agreement

- (a) If the City mortgages, charges or otherwise encumbers the Lands, the City shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee of the Lands permitting Project Co and the Lenders' Agent to access and use the Lands under the use and access granted pursuant to this Section 14 and the Lenders' Direct Agreement, respectively, free from interference from such mortgagee or any person claiming by or through such mortgagee. This Section 14.5 shall not apply in respect of any portion of such Lands used or developed pursuant to Section 14.2(b) if neither the license granted pursuant to this Section 14 nor the Project Operations pertain to such portion of the Lands.

14.6 Adjustments to Lands Available to Project Co

- (a) [REDACTED]
- (b) [REDACTED]
- (c) Project 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 System Infrastructure or New Municipal Infrastructure shall be located on, or rely in any way upon, on any properties which Project Co acquires pursuant to this Section 14.6(c).

15. ENCUMBRANCES

15.1 Project Co Shall Perform Obligations Under Encumbrances

- (a) Project Co's access to and use of the Lands or any part thereof granted in Article 14 shall be subject to the Encumbrances.
- (b) Subject to Section 15.2, Project Co shall perform all obligations of the City under all Encumbrances for or on behalf of the City, other than:
 - (i) obligations which Project 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 Project 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 15.1(b)(i), Project Co shall perform such obligations in accordance with this Section 15).
- (c) Project Co, whether before, during or after the completion of the Works, shall not in any manner breach the Encumbrances.

15.2 No Encumbrances

- (a) Project 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 due to an act or omission of Project Co or any Project Co Party.
- (b) Project Co does not have title to the Lands or any interest therein, and no act or omission by Project Co or any Project 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;
 - (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 Project Co's obligations under Sections 15.2(c)(i) and 15.3(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 Project Co or any Project Co Party (which has not been consented to in writing by the City), Project 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 ten (10) Business Days of Project 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 Project 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 Project Co hereby appoints the City as Project Co's attorney to execute any termination or discharge of an Encumbrance referred to in this Section 15.2(c)(i), which appointment is coupled with an interest and shall be irrevocable for the Project Term and thereafter so long as any of Project Co's obligations under this Section 15.2(c)(i) are outstanding;
 - (ii) due to an act or omission of Project Co or any Project Co Party (which has been consented to in writing by the City), Project Co shall perform all obligations under such Encumbrance in accordance with Sections 15.1 and 15.3 (as is applicable) and at its sole cost and expense; or
 - (iii) which is not due to an act or omission of Project Co or any Project Co Party, prior to performing obligations under any such Encumbrance, Project 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 Project Co to perform the required obligations thereunder.
- (d) For the purposes of this Section 15 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 Project Co and Project Co Parties) and such non-compliance materially interferes with the use of the Lands for the purposes of the Project Operations; or
 - (ii) an encumbrance otherwise identified in Sections (b) (vii), (viii), (ix) or (x) of Schedule 16 – Encumbrances was not disclosed to Project 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 Project Operations,

the City shall be entitled to the same election as set out in Section 15.2(c)(iii), subject to Section 15.2(e). Project Co shall promptly notify the City of any such encumbrance upon Project Co becoming aware of such encumbrance.

- (e) If Project Co is instructed to perform obligations under an Encumbrance pursuant to Section 15.2(c)(iii) or Section 15.2(d), which performance imposes costs or delays in the performance of Project Operations, such performance,
 - (i) prior to Substantial Completion shall, subject to and in accordance with Section 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event; and
 - (ii) following Substantial Completion shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.
- (f) In the event that any portion of the Lands becomes subject to any encumbrance following Financial Close due to an act or omission of Project Co or any Project Co Party, Project Co acknowledges and agrees that it will be required to remove, vacate or discharge such encumbrance. For the purposes of the foregoing, “encumbrance” includes those matters included in Encumbrances, insofar as they relate to or affect the Lands.
- (g) In respect of Encumbrances that are contained in Third Party Access Agreements, Project Co shall, as part of the Project Operations, at its own cost and risk and in a manner compliant with and so as not to cause a default by the City under the terms of the Third Party Access Agreement, (i) observe, comply with, perform and complete all obligations of the City contained in all Third Party Access Agreements, and (ii) schedule the performance of the Project Operations in accordance with the requirements set out in the Third Party Access Agreements and in Schedule 15-Output Specifications. In the event that any act or omission of Project Co or any Project Co Party causes a default under a Third Party Access Agreement, Project Co shall indemnify, save harmless and pay all costs (including legal costs), damages (including liquidated damages), penalties, fines, charges and other amounts payable under the Third Party Access Agreement as a result of such act or omission.
- (h) Unless expressly stated in Schedule 15 – Output Specifications that the Third Party Access Agreement is to be fully and formally assigned to and assumed by Project Co as part of its obligations under this Project Agreement, the City shall continue to maintain the contractual interface with the counterparties to the Third Party Access Agreements, to pay all amounts required to be paid under the applicable Third Party Access Agreement, and continue to collect all payments, rents, fees, costs, charges and other amounts payable under the applicable Third Party Access Agreement. Without diminishing the responsibility of Project Co under this Section 15.2, the City and Project Co will discuss and coordinate the performance of their respective roles and responsibilities under each of the Third Party Access Agreements with a view to minimizing the potential for default thereunder.

15.3 Construction Lien Act (Ontario)

- (a) The Parties acknowledge that Section 15.2 shall apply to claims for liens made against the Lands pursuant to the CLA and shall also apply to claims made against the City or the holdback under the CLA as though such a claim were an Encumbrance against the Lands as referred to therein.

- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA.
- (c) Project 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 CLA, require that a certificate of completion under Section 33(1) of the CLA 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) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Project Co shall promptly provide the City with a copy of any materials which are provided to the Lenders to evidence compliance with the CLA.
- (f) Upon request by the City, Project 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) Project Co shall cause a Payment Certifier to be appointed under the Construction Contract and shall cause such Payment Certifier to certify the substantial performance of the Construction Contract in accordance with the CLA.
- (h) The City shall provide Project Co with any notice of lien that is delivered to the City in connection with the Works promptly (and in any event within 5 Business Days) following receipt thereof.

16. SITE CONDITION

16.1 Acceptance of Site Condition

- (a) Subject to Sections 6.4, 16.1(b), 16.2, 16.3, 16.4, 16.5, 16.7, 16.8, 16.9 and 16.10, Project Co acknowledges and agrees that it has inspected or investigated the Lands, the Existing Trillium Line Assets and the Site Conditions, including the Background Information, prior to executing this Project Agreement and agrees to accept the Lands, the Existing Trillium Line Assets and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 16.1(b), 16.2, 16.3, 16.4, 16.5, 16.7, 16.8, 16.9 and 16.10, Project Co shall not be entitled to make any claim of any nature whatsoever against the City or any City Party on any grounds relating to the Lands, the Existing Trillium Line Assets or the Site Conditions, including the fact that incorrect or insufficient information on any matter relating to the Lands, the Existing Trillium Line Assets or the Site Conditions was given to it by any person, whether or not a City Entity or a City Party.

- (b) Section 16.1(a) is not intended to prohibit Project Co from relying upon information that has been provided by a person or other entity who has given Project Co an express written entitlement to rely on that information, provided, however, that, subject to Sections 6.4, 16.2, 16.3, 16.4, 16.5, 16.7, 16.8, 16.9 and 16.10, Project Co shall not be entitled to make any claim of any nature whatsoever against the City or any City Party on any grounds relating to the information provided by that person. For clarity, subject to Sections 6.4, 16.2, 16.3, 16.4, 16.5, 16.7, 16.8, 16.9 and 16.10, Project Co's legal recourse shall be against the person or other entity that provided the express written entitlement to rely on the information and not the City or any City Party.
- (c) Subject to Sections 6.4, 16.1(b), 16.2, 16.3, 16.4, 16.5, 16.7, 16.8, 16.9 and 16.10 Project Co acknowledges and agrees that it has and shall be deemed to have:
- (i) performed all necessary due diligence and investigation or inspection on the Lands and examined the Lands and their surroundings and the Existing Trillium Line Assets;
 - (ii) performed all necessary due diligence and investigation or inspection on Existing Trillium Line Assets and satisfied itself prior to executing this Project Agreement as to the structural, environmental and general condition of such Existing Trillium Line Assets;
 - (iii) satisfied itself as to the presence of any Contamination on, in or under the Lands, or migrating to or from the Lands in accordance with Good Industry Practice, taking into account all matters relating to the Lands, including any Existing Trillium Line Assets, and any other buildings, structures and works, on, over and under the Lands existing on the date hereof;
 - (iv) satisfied itself as to the adequacy of the 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;
 - (v) 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;
 - (vi) 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; and
 - (vii) in accordance with Good Industry Practice, taking into account all matters relating to the Lands, including the presence of any Existing Trillium Line Assets 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.
- (d) Project 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 Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

16.2 Contamination

- (a) To the extent required to complete the Works, at all times throughout the Project Term, Project Co shall be responsible for managing, remediating and/or removing, in accordance with Section 4.5(a) of Schedule 17 – Environmental Obligations, any Contamination located on, in or under the Lands which was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports or the Geotechnical Reports (“**Existing Contamination**”). Notwithstanding the forgoing or anything else to the contrary contained in this Agreement, Project Co shall have no responsibility for any Contamination that is migrating to or from the Lands, except (I) to the extent that Project Co or any Project Co Party Released such Contamination in a manner which does not comply with Applicable Law or (II) Project Co or any Project Co party is causing the migration of Existing Contamination.
- (b) Project Co shall be responsible for removing or remediating, in accordance with Section 4.5(g) of Schedule 17 – Environmental Obligations:
 - (i) any Contamination which Project Co or any Project Co Party has brought onto the Lands and caused or permitted to be Released in a manner which does not comply with Applicable Law; or
 - (ii) any Existing Contamination which was harmless or stored, contained or otherwise dealt with in accordance with Applicable Law which Project Co or any Project Co Party causes or permits to be Released in a manner which does not comply with Applicable Law.

In addition, and without limiting any other obligation of Project Co under the Project Agreement, Project Co shall be responsible for all Direct Losses associated with the Releases of Contamination or Existing Contamination described in Sections b(i) and b(ii) above.

- (c) Contamination which is not the responsibility of Project Co pursuant to Sections 16.2(a) and 16.2(b) shall be the responsibility of the City.
- (d) [Intentionally Deleted].
- (e) Upon the discovery of any Contamination, Project Co shall immediately inform the City Representative and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and Schedule 17 - Environmental Obligations in respect thereof:
 - (i) at the City’s cost pursuant to Section 16.2(h), in respect of Contamination for which the City is responsible pursuant to Section 16.2(c); and
 - (ii) at its own cost in respect of Contamination for which it is responsible pursuant to Section 16.2(a) or 16.2(b).
- (f) Except to the extent required to prevent or mitigate an Emergency or to comply with Applicable Law, Project Co shall not undertake any significant work pursuant to Section 16.2(e) in respect of

Contamination for which the City is responsible pursuant to Section 16.2(c) until the City Representative has been given a reasonable opportunity to review the nature and extent of the Contamination and has instructed Project Co to proceed with such work.

- (g) In the event that the City wish Project Co to perform actions in respect of any Contamination which are in addition to any required pursuant to Section 16.2(e), then the City shall issue an instruction to Project Co specifying what action the City requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the City's cost pursuant to Section 16.2(h).
- (h) If Sections 16.2(e), 16.2(f) or 16.2(g) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination for which the City is responsible pursuant to Section 16.2(c) or as a result of any instructions given by the City pursuant to Section 16.2(f) 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 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event; and
 - (ii) following Substantial Completion, shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.
- (i) In the event that the City and Project Co do not agree as to the nature or extent of Contamination, or in the event of a disagreement as to whether Project Co. is responsible for Contamination pursuant to either Sections 16.2(a) or 16.2(b), or the actions to be performed by Project Co pursuant to Section 16.2(d) or Schedule 17 - Environmental Obligations, such disagreement shall be referred for determination to the Independent Certifier, and if the Independent Certifier is unable to make the determination, then he or she shall appoint an independent and suitably qualified and experienced person to make such determination (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 only in respect of the nature or extent of the Contamination and any action to be performed by Project Co pursuant to Section 16.2(e) and Schedule 17 – Environmental Obligations, 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 26 - Dispute Resolution Procedure.

16.3 Items of Geological, Historical Heritage 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 and responsibility of the City or the owner of the relevant property, as applicable.
- (b) The City shall be responsible for items referred to in Section 16.3(a) except for any such items that were described in, or were properly inferable, readily apparent or readily discoverable from,
 - (i) the Archaeological Reports; or

- (ii) any Cultural Heritage Reports.
- (c) Upon the discovery of any item referred to in Section 16.3(a), Project 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 Project Operations in so far as performing such Project Operations 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 compliance by all Project Co Parties, 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) and the *Standards and Guidelines for the Conservation of Historic Places in Canada*:
 - (A) at the City's cost pursuant to Section 16.3(e), in respect of any such discovery for which the City is responsible pursuant to Section 16.3(b); and
 - (B) at its own cost in respect of any such discovery for which it is responsible pursuant to Section 16.3(b),
 - (iii) comply with all requirements set out in Part 6 of Schedule 17-Environmental Obligations.
- (d) In the event that the City wishes Project Co to perform actions in respect of any discovery of any item referred to in Section 16.3(a) which are in addition to any required pursuant to Section 16.3(c), then the City shall issue an instruction to Project Co specifying what action the City requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the City's cost pursuant to Section 16.3(e).
- (e) If Sections 16.3(c) or 16.3(d) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of any such discovery for which the City is responsible pursuant to Section 16.3(b) or as a result of any instructions given by the City pursuant to Section 16.3(d) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation shall,
 - (i) prior to Substantial Completion (but in the case of Section 16.3(c), only to the extent it directly results in the interruption of the Works), subject to and in accordance with Section 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event; and
 - (ii) following Substantial Completion, subject to and in accordance with Schedule 21 – Variation Procedure, result in a Variation.
- (f) In the event that the City and Project Co do not agree as to the nature or extent of the actions required to be performed by Project Co pursuant to Section 16.3(c)(ii), such disagreement shall be referred for determination to the Independent Certifier, and if the Independent Certifier is unable to make the determination, then he or she shall appoint an independent and suitably qualified and

experienced person to make such determination (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 26 - Dispute Resolution Procedure.

16.4 Species-at-Risk

- (a) Project 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 Project Co is responsible pursuant to Section 16.4(a), Project Co shall, at its own cost, comply, and ensure compliance by all Project 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 is responsible pursuant to Section 16.4(a), Project Co shall:
 - (i) immediately inform the City Representative of such discovery; and
 - (ii) comply, and ensure compliance by all Project 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 16.4(d).
- (c) In the event that the City wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.4(b), then the City shall issue an instruction to Project Co specifying what action the City requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the City's cost pursuant to Section 16.4(d).
- (d) If Sections 16.4(b) or 16.4(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of the discovery of any Species-at-Risk for which the City is responsible pursuant to Section 16.4(a) or as a result of any instructions given by the City pursuant to Section 16.4(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 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event; and
 - (ii) following Substantial Completion shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.

16.5 Defects – Existing Vehicle Fleet

- (a) From Financial Close to the commencement of the Shutdown Period, the City agrees (i) to

continue to use and operate the Existing Vehicle Fleet in a manner and at service levels consistent with the manner and service levels with which the Existing Vehicle Fleet was used prior to Financial Close, and (ii) to cause the maintenance, repair, refurbishment and replacement of the components of the Existing Vehicle Fleet in accordance with Existing Vehicle Maintenance Standard.

- (b) As at 9:00 a.m. on the commencement date of the Shutdown Period, the City shall hand over, and Project Co shall assume, full care, custody, control, risk and responsibility for the Existing Vehicle Fleet, including any Defects or Latent Defects in the Existing Vehicle Fleet, and, for greater certainty, notwithstanding that Project Co may be disputing, in accordance with this Section 16.5, that the Existing Vehicle Maintenance Standard has not been observed and complied with by the City. The City shall, concurrent with the hand over, prepare a report summarizing the status of all outstanding Defects in the Existing Vehicle Fleet which have been identified to the City as at that time.
- (c) Project Co acknowledges having been provided with Background Information relating to, and several opportunities prior to Financial Close to inspect, the Existing Vehicle Fleet. Following Financial Close, and on a monthly basis thereafter until the commencement of the Shutdown Period, the City shall, with reasonable promptness, provide to Project Co (i) written confirmation from the City that the maintenance requirements prescribed in the Existing Vehicle Maintenance Standard have been performed, together with copies of the maintenance records relating to the Existing Vehicle Fleet (collectively, the “**Vehicle Maintenance Records**”), (ii) the schedule of future dates and proposed major maintenance activities to be performed in connection with the Existing Vehicle Fleet (the “**Major Maintenance Schedule**”), and (iii) 5 Business Days’ notice and the opportunity to have a competent representative present to observe the planned major maintenance and repair activities relating to the Existing Vehicle Fleet (a “**Planned Major Maintenance Activity**”). Project Co shall provide to the City written notice of its intention to attend and observe a Planned Major Maintenance Activity and the persons who will be attending and observing such event at least 3 Business Days prior to the applicable date stipulated in the Major Maintenance Schedule. The City shall make reasonable efforts to accommodate such requests, but Project Co acknowledges and agrees that on occasion, unscheduled and emergency maintenance or repair items are required to be performed, and that on such occasions, it may be expedient to attend to upcoming scheduled maintenance or repair activities while the emergency maintenance or repair item is addressed. In these circumstances, the City will not be able to provide 5 Business Days notice of the event to allow for observation of such activities, but will provide as much notice to Project Co as is reasonably practicable in the circumstances.
- (d) The City shall be deemed to have complied with its obligations to maintain the Existing Vehicle Fleet to the Existing Vehicle Maintenance Standard as detailed in the applicable Vehicle Maintenance Records and Project Co shall be deemed to have accepted that the Existing Vehicle Maintenance Standard as reflected by the applicable Vehicle Maintenance Records has been observed and complied with by the City unless it provides to the City, within 10 Business Days of (i) each delivery of copies of Vehicle Maintenance Records from time to time, or (ii) each Planned Major Maintenance Activity in accordance with the Major Maintenance Schedule (or each unscheduled emergency maintenance or repair activity as set out in Section 16.5(c)) written notice of any failures of the City to meet the Existing Vehicle Maintenance Standard revealed by the relevant Vehicle Maintenance Records or, subject as aforesaid, such Planned Major Maintenance Activity.

- (e) The City shall consider the contents of any notice provided by Project Co pursuant to Section 16.5(d), and shall advise Project Co within a reasonable time of receipt of such notice as to whether it agrees with the contents of the notice and, if applicable, what steps the City proposes to take to comply with the Existing Vehicle Maintenance Standard. In the event that the City and Project Co do not agree as to the nature or extent of the actions required to be performed by the City to meet the requirements of the Existing Vehicle Maintenance Standard, such disagreement shall be referred for determination to the Independent Certifier, and if the Independent Certifier is unable to make the determination, then he or she shall appoint an independent and suitably qualified and experienced person acceptable to Project Co and the City, each acting reasonably, to make such determination (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 26 - Dispute Resolution Procedure.

16.6 Defects – Existing Trillium Line Assets

- (a) As of and from Financial Close, save and except for the City Retained Existing Structures Latent Defect Responsibility, Project Co shall assume full responsibility for any Latent Defects in the Existing Trillium Line Assets. From Financial Close to the commencement of the Shutdown Period, the City agrees to continue to operate the Existing Trillium Line in a manner and at service levels consistent with the operation of the Existing Trillium Line prior to Financial Close. For clarity, Project Co shall not be responsible for any costs or expenses related to the operation and maintenance of the Existing Trillium Line at any time prior to the commencement of the Shutdown Period except for any damages, costs, expenses, losses or claims arising from any acts or omissions of Project Co or any Project Co Party in respect of the Existing Trillium Line.
- (b) As at 9:00 a.m. on the commencement date of the Shutdown Period the City shall hand over, and Project Co shall assume full care, custody, control, risk and responsibility for the Existing Trillium Line Assets, including without limitation (but subject as hereinafter provided), any Defects or Latent Defects in the Existing Trillium Line Assets. Such assumption of responsibility and liability in respect of the Existing Trillium Line Assets by Project Co is subject only to (i) the City Retained Dow's Lake Latent Defect Responsibility, and, (ii) the City Retained Existing Structures Latent Defect Responsibility.
- (c) Project Co shall maintain the Existing Trillium Line Assets in accordance with the Shutdown Period Transition and Maintenance Plan.

16.7 Latent Defects – Dow's Lake Tunnel Structure

- (a) At the commencement of the Shutdown Period, Project Co shall, subject to Section 16.7(b), undertake and assume responsibility and liability for (i) performing the maintenance and repairs to the Dows Lake Tunnel Structure described in section 4.8(c)(xxvi) of Part 2 of Schedule 15-2 to the Project Agreement; (ii) performing the installation, maintenance, repair and replacement of the structural or other component within or on the Dows Lake Tunnel Structure affixed, installed or constructed by Project Co; and (iii) the repair of any damage to the Dows Lake Tunnel Structure caused by or resulting from the performance, or any failure by Project Co to perform,

the Project Operations in accordance with the provisions of this Project Agreement (the “**Project Co Assumed Responsibilities for the Dow’s Lake Tunnel Structure**”).

- (b) The City shall retain the City Retained Dow’s Lake Latent Defect Responsibility. In the event that any Latent Defect in the Dows Lake Tunnel Structure is demonstrated by Project Co to impact the ability of Project Co to perform and complete the Project Operations in accordance with the requirements of this Project Agreement, such event shall:
 - (i) prior to Substantial Completion, subject to and in accordance with Section 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event; and,
 - (ii) following Substantial Completion, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation,

provided that any failure by the City in fulfilling this City Retained Dow’s Lake Latent Defect and Maintenance Responsibility or any such Latent Defect in the Dow’s Lake Tunnel Structure was not caused or contributed to by Project Co or a Project Co Party.

16.8 Latent Defects – Existing City Retained Latent Defect Structures

- (a) Project Co shall, subject to Section 16.8(b), be responsible for the maintenance and repair of the Existing City Retained Latent Defect Structures throughout the Project Term, subject only to the City Retained Existing Structures Latent Defect Responsibility.
- (b) In the event that Project Co is able to demonstrate to the reasonable satisfaction of the City that a Latent Defect exists in the Existing City Retained Latent Defect Structures that:
 - (i) was not within the actual knowledge of Project Co or a Project Co Party, as of Financial Close;
 - (ii) was not referenced or described in, or was not properly inferable, readily apparent or readily discoverable from the Background Information; or
 - (iii) was not caused or contributed to by Project Co or a Project Co Party,

such event shall:

- (A) prior to Substantial Completion, subject to and in accordance with Section 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event; and,
- (B) following Substantial Completion, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.

16.9 Defects Correction – General Provisions

- (a) Upon the discovery of a matter that Project Co alleges is a City Retained Dow’s Lake Latent Defect Responsibility or a City Retained Existing Structures Latent Defect Responsibility

(collectively, a “**City Retained Latent Defect Responsibility**”), Project Co shall immediately provide written notice to the City Representative.

- (b) Project Co shall not undertake any work in respect of any alleged City Retained Latent Defect Responsibility until the City Representative has been given a reasonable opportunity to review the nature and extent of the issue and has instructed Project Co to proceed with such work.
- (c) In the event that the City wishes Project Co to remedy any City Retained Latent Defect Responsibility, then the City shall issue an instruction to Project Co specifying what action the City requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the City’s cost, subject to and in accordance with Section 16.9(d).
- (d) If the City requires Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of instructions given by the City pursuant to Section 16.9(c) and which would not otherwise be required to be performed by Project Co under this Project Agreement, then, if such request is made prior to Substantial Completion, any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event, and if such request is made following Substantial Completion shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.

16.10 Mislocated or Unknown Utilities

- (a) Project Co shall be responsible for Utility Infrastructure on the Site pursuant to Schedule 15 – Output Specifications, except for any Utility Infrastructure that is Mislocated Utility Infrastructure within the study area limits represented by the Subsurface Utility Engineering Reports, or is Utility Infrastructure that:
 - (i) was not within the actual knowledge of Project Co or a Project Co Party, as of the date which is 30 days prior to the RFP Technical Submission Deadline; and
 - (ii) 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 16.10(a)(i), “actual knowledge” shall mean knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in Project Co’s proposal in response to the Request for Proposals.
- (c) If Utility Infrastructure on the Site that is not the responsibility of Project Co pursuant to Section 16.10(a) delays Project 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 38 be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event.

17. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS

17.1 Governmental and Utility Company Fees

- (a) Project Co shall be responsible for,

- (i) all Financial Obligations under or in respect of all Project Co Permits, Licences, Approvals and Authorizations; and
- (ii) all Financial Obligations in respect of the City Permits, Licences, Approvals and Authorizations that are set out as being Project Co's responsibility in Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations or Schedule 32 – City Permits, Licences, Approvals and Authorizations.

For clarity, and notwithstanding the foregoing, Project Co shall not be responsible for payment of any development charges relating to the Works, System Infrastructure or the New Municipal Infrastructure.

- (b) Subject to Section 17.1(a)(ii), the City shall be responsible for all Financial Obligations under or in respect of all the City Permits, Licences, Approvals and Authorizations, including to the City, any Utility Company, any Governmental Authority or any third party in respect of the Project Operations, 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 Authorizations; and
 - (iii) any other amounts payable under any City Permits, Licences, Approvals and Authorizations.
- (c) The Parties agree that any refund, partial rebate or credit granted by the City, any applicable Utility Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Sections 17.1(a) and 17.1(b) shall be for the benefit of the City to the extent such Financial Obligations were paid by the City and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co. Without limiting the generality of the foregoing, to the extent that the City enters into any cost sharing arrangements with the City, any Utility Company, any Governmental Authority or any third party, Project Co acknowledges and agrees that the City shall be the sole beneficiary of any such cost sharing arrangements and Project Co shall have no entitlement whatsoever to any benefit arising from any such cost sharing arrangements.

18. CHANGE IN STANDARDS

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the Project Operations, and that standard has changed between the date of this Project Agreement (or in respect of the Revenue Vehicle Supplier only, November 2, 2017) and the date that such compliance is required, then Project 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 Project Operations 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 21 - Variation Procedure, result in a Variation. If the City does not

require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Project Agreement (or in respect of the Revenue Vehicle Supplier only, November 2, 2017), without a Variation therefor. This Section 18 shall not apply where a change in a technical standard is also a Change in Law.

19. COORDINATION AND NO DISRUPTION

- (a) Project Co shall perform the Project Operations so as to coordinate with,
- (i) subject to and in accordance with Section 9.8 (to the extent applicable), the operations of and the performance of any services by the City, any City Party, any Governmental Authority, any Railway Company, any counterparty to a Third Party Access Agreement and any Utility Company including the performance of the Governmental Activities and the Other Works;
 - (ii) the construction, operation and maintenance of the System Extension in accordance with Schedule 36 – System Extension;
 - (iii) the construction of the interface, connection or inter-connection between the System Infrastructure and the existing City network, including any existing transit systems, highway systems, railway systems, railway networks and any other Ontario or City of Ottawa road or roadway;
 - (iv) Future Known Expansions; and
 - (v) the performance of any services by any Operator.
- (b) Project Co shall use commercially reasonable efforts to minimize:
- (i) any interference with the operations, construction and maintenance of:
 - (A) the City, any City Party, any Governmental Authority, Fare Control Service Provider, any Other Contractor or Utility Company, including the performance of the Governmental Activities and the Other Works;
 - (B) the existing City network; and
 - (C) the existing City road network;
 - (ii) any lane closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the System Infrastructure.

20. DESIGN AND CONSTRUCTION OBLIGATIONS

20.1 Overall Responsibility

- (a) Project Co shall perform and complete the Works:
- (i) so as to satisfy the Output Specifications;

- (ii) in accordance with the Project Co Proposal Extracts;
 - (iii) in accordance with the Design Data;
 - (iv) in accordance with the Works Schedule; and
 - (v) in accordance with the other terms and conditions of this Project Agreement.
- (b) Without prejudice to Section 20.1(a), but subject to the provisions of the Maintenance and Rehabilitation Requirements, Schedule 19 - Payment Mechanism and Schedule 23 - Expiry Transition Procedure, if, at any time during the Project Term, any of the Works, the System Infrastructure, the New Municipal Infrastructure or any parts thereof do not fully satisfy the Output Specifications and/or any other term or condition of this Project Agreement (other than the Project Co Proposal Extracts) Project Co shall, at its own cost and expense, rectify the Works, the System Infrastructure, the New Municipal Infrastructure and any part thereof so that:
- (i) the Works, the System Infrastructure, the New Municipal Infrastructure and all parts thereof shall, at all times, comply with and satisfy in full the Output Specifications and the other terms and conditions of this Project Agreement (other than the Project Co Proposal Extracts); and
 - (ii) the Works, the System Infrastructure, the New Municipal Infrastructure and all parts thereof will, at all times, be able to meet all safety and performance standards and other requirements set out in the Output Specifications and the Project Agreement.

20.2 Completion of System Infrastructure and New Municipal Infrastructure

- (a) Project Co shall design, engineer, construct and commission the System Infrastructure and the New Municipal Infrastructure so as to provide the City complete and operational System Infrastructure the New Municipal Infrastructure in accordance with the Output Specifications and the Project Co Proposal Extracts, and that will allow Project Co to perform the Works and the Maintenance and Rehabilitation Services, all in accordance with and subject to the terms of this Project Agreement.

20.3 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the System Infrastructure, the New Municipal Infrastructure and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 - Review Procedure and this Section 20.3.
- (b) The further development of the design of the System Infrastructure and New Municipal Infrastructure and the process by which such design is progressed must fully comply with the requirements of this Project Agreement.
- (c) In order to develop the detailed design of the System Infrastructure and the New Municipal Infrastructure, Project 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

- System Infrastructure, the New Municipal Infrastructure or a change in the Construction Activities, or a change in the Maintenance and Rehabilitation Services, then such change shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.
- (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 (to a scale required by the City Representative):
- (i) design development drawings, reports, schedules and specifications progressed from Commercial Close with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawing documentation, 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 (collectively, the “**Construction Document Submittals**”); and
 - (iii) all other reports, studies, plans and documentation required pursuant to Schedule 10 - Review Procedure or otherwise identified in the Project Agreement.
- (e) Project 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 20.3(d).
- (f) The Design Data and other items listed in Section 20.3(d) must contain, at a minimum, the information required pursuant to Article 3 of Schedule 10 – Review Procedure, and must identify where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (g) The Design Data and other items listed in Section 20.3(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 Project 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) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the System Infrastructure or the New Municipal 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 26 - Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk undo, remove from the System Infrastructure or the New Municipal Infrastructure and replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (i) [Intentionally deleted].
- (j) Neither the City nor any City Party will have any liability:
 - (i) if a document submitted by Project Co and reviewed by the City, the City Representative or the City Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to any defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (k) Project 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 Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (l) Project Co shall allow the City Representative and 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 and/or the City Design Team, as applicable, as soon as practicable following receipt of a written request from the City Representative.
- (m) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database and a web based Review Procedure Activities Register, which Project 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.

20.4 Start-Up Meeting

- (a) Within 10 Business Days after Commercial Close, Project 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) Project Co's plan to develop a successful long-term partnership with the City for the purpose of supporting the City in achieving its vision, mission and core values;
 - (ii) Project Co's plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
 - (iii) Project Co's process to ensure optimum design quality;
 - (iv) Project Co's approach to ensure that all Project Co Parties perform the Works, as applicable, as a fully integrated team;
 - (v) a proposed schedule of Works Submittals which is consistent with the Current PBS and which provides for a progressive and orderly flow of Works Submittals from Project Co to the City Representative to allow sufficient time for review of each Works Submittal by the City Representative, and taking into account both the resources available to the City Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Current PBS;
 - (vi) Project Co's plan to successfully integrate feedback from consultations with Stakeholders and the City Design Team;
 - (vii) Project Co's approach to timing, construction, and adjustment; and
 - (viii) 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 and that takes into account the document security protocol described in Section 50.5(f).

20.5 Design Review Meetings

- (a) In order to obtain input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, Project Co and the Design Team shall hold design review meetings (the "**Design Review Meetings**") with the City and the City Design Team upon the following terms:
- (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the City Representative;
 - (ii) all Design Review Meetings shall be held in the City of Ottawa unless the City agrees otherwise in writing;
 - (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and shall incorporate such schedule into the draft Works Schedule;

- (iv) Project Co shall circulate to the City and the City Design Team an agenda for each of the Design Review Meetings no later than 10 Business Days prior to the relevant Design Review Meeting;
 - (v) in advance of a Design Review Meeting, Project 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 System Infrastructure and New Municipal 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;
 - (vi) the Design Review Meetings shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
 - (vii) Project Co shall maintain minutes of the Design Review Meetings, including possible design solutions and changes in design, and, within 5 Business Days after each Design Review Meeting, Project Co shall provide to the City and the City Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting; and
 - (viii) the City and Project Co agree that the subject matter of the Design Review Meetings 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 Review Meetings.
- (b) The Parties shall, together with the City Design Team, hold Design Review Meetings prior to the submission of:
- (i) each of the Design Development Submittals; and
 - (ii) each of the Construction Document Submittals.
- (c) The purpose of the Design Review Meetings is to facilitate the incorporation of the City input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

20.6 Testing

- (a) To the extent and in the manner provided by the Quality Documentation and other terms of this Project Agreement, all testing shall be carried out by a duly accredited and certified testing facility and organization. The City Representative shall be given timely advance Notice (being not less than 2 Business Days) of the date of such tests, except for categories of tests (if any) in respect of which the City Representative gives written Notice to Project Co that it does not require such Notice. The City Representative and any other City Party at the City's option shall be entitled to attend at any test. Any material or plant which fails such tests shall be rejected.

- (b) Project Co shall develop a test recording system which shall permit ready retrieval of all test readings and shall provide information relating to tests proposed, test methodology and test readings to the City Representative on request.
- (c) With respect to continuous testing operations (such as concrete quality, structural concrete strengths, aggregate quality, compaction tests and bituminous material quality), Project Co shall provide to the City Representative at regular intervals (not to exceed weekly unless otherwise agreed by the Parties) test summary sheets and statistical analyses indicating strength and quality trends.

20.7 Performance of Design Obligations

- (a) In the design and engineering of the System Infrastructure and New Municipal Infrastructure, Project Co, its consultants and the Project Co Parties shall exercise the standard of care normally exercised by licensed or registered professional engineering and architectural personnel and other licensed or registered professionals, as applicable, having knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Project 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 and all other applicable standards, specifications and codes, as otherwise required by Applicable Law.

20.8 General Construction Obligations

- (a) Project Co is 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 System Infrastructure and New Municipal Infrastructure, and other performance of the Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
 - (i) construct the Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 11 – Integrated Management System Requirements;
 - (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Lands by Project Co or any person for whom Project Co is responsible at law;
 - (iii) protect the Works from all of the elements, casualty and damage; and
 - (iv) in respect of plant, equipment and materials incorporated in the Works, use plant, equipment and materials that:
 - (A) are of a kind that are consistent with the Output Specifications;

- (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice with respect to health and safety so as not to be hazardous or dangerous; and
 - (C) where they differ from the Output Specifications, have been substituted with the City's prior written consent in accordance with Section 20.9.
- (c) [Intentionally deleted].
- (d) Without limiting the provisions of Sections 20.8(a), (b), and (c), Project Co shall:
 - (i) have complete control of the Works and shall be responsible for the integration of the various parts and systems comprising any portions of the Works with existing parts of the municipal infrastructure systems and Existing Trillium Line Assets impacted by the Works;
 - (ii) prior to commencing applicable procurement and construction activities, verify, at the Site, all measurements and levels necessary for proper and complete fabrication, assembly and installation of the relevant Works, and shall further carefully compare such field measurements and conditions with the requirements of this Project Agreement. Where dimensions are not included or exact locations are not apparent, Project Co shall immediately notify the City Representative in writing and obtain written instructions from the City Representative (which written instructions shall be provided by the City within one (1) Business Day of receipt of such notification from Project Co) before proceeding with any part of the Works affected thereby; and
 - (iii) comply with all rules, directives and requirements of the City in respect of the Works as set forth in the Output Specifications so as not to disrupt (unless otherwise agreed to by the City) the operations of the existing municipal infrastructure systems.
- (e) Project Co acknowledges that in addition to the use of Good Industry Practice, this Project Agreement includes instructions as to the manner in which the Works are to be performed in order to minimize disturbance to properties and operations adjacent to the Lands, including with respect to noise, dust control and access to the Lands. Project Co shall develop and implement protocols in furtherance of the foregoing in accordance with the Output Specifications.
- (f) Project Co shall, at its own cost, use all methods required to comply with the instructions set out in this Project Agreement, during the performance of the New Municipal Infrastructure Works. Project Co shall, at its own cost, fully cooperate with the City in complying with said instructions during the performance of the New Municipal Infrastructure Works.
- (g) Should Project Co, in the performance of this Project Agreement, damage the Works, the property of the City at the Site, or property adjacent to the Site, Project Co shall be responsible to Make Good such damage at Project Co's expense.
- (h) Project Co shall maintain the Works in a tidy condition and free from the accumulation of waste products and debris, confine construction machinery and equipment, storage of products, and operations of employees to limits indicated by Applicable Law or this Project Agreement, and not

unreasonably encumber the Site with products. Project Co shall not load or permit to be loaded any part of the Works with a weight or force that will endanger the safety of the Works.

- (i) In performing the Works, Project Co shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary supports, structures, and facilities and the design and execution of construction methods required in their use. Any review of Project Co's temporary supports, structures, or facilities or any shop drawings related thereto by the City or City Representative does not relieve Project Co of its "sole responsibility" under this section. Project Co shall engage registered professional engineering personnel skilled in the appropriate disciplines to perform the functions referred to in this Section 20.8(i) where required by Applicable Law or by this Project Agreement and in all cases, where such temporary supports, structures, and facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- (j) Prior to application for the Final Completion Certificate, Project Co shall remove waste products and debris, and shall leave the Lands and the System clean and suitable for operation of the System. Project Co shall remove products, tools, construction machinery, and equipment not required for the performance of the remaining Works.

20.9 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, which shall not be unreasonably withheld by the City if any such item is no longer commercially available.

20.10 Works Submittals

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by the City prior to 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 Project Co for review by the City pursuant to Schedule 10 - Review Procedure shall be the draft document control and security protocol described in Section 50.5(f).

20.11 [Intentionally Deleted]

20.12 Apprenticeship Plan and Program

- (a) No later than six months after Financial Close, Project Co shall provide a plan setting out Project Co's Project-specific approach to maximizing apprenticeship opportunities on the Project in connection with the completion of the Works (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 Project Co's Apprenticeship Plan targets and requirements; and
 - (v) a program to support apprentices on the Project, to complete their apprenticeships prior to the Substantial Completion Date and, for those whose apprenticeships are not complete by the Substantial Completion Date a program to support apprentices to complete their apprenticeships after the Substantial Completion Date.
- (b) Project Co shall implement the approved Apprenticeship Plan.
- (c) Project 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 Project Co's progress toward achieving the objectives set out in the Apprenticeship Plan, including an identification of barriers that prevented Project Co from achieving its objectives.
- (d) The City may require Project Co to amend its Apprenticeship Plan if, in its opinion, acting reasonably, Project 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 Project Co's Apprenticeship Plan to the public. Project Co's Apprenticeship Plan shall not be Confidential Information.

20.13 Utility Works - Cash Allowance

- (a) Project Co shall perform and complete, the Project 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, and in particular, Article 8 of Schedule 15-2—Design and Construction Requirements;
 - (ii) so as to satisfy the Design and Construction Specifications;
 - (iii) in accordance with the Works Schedule; and
 - (iv) in accordance with the other terms and conditions of this Project Agreement.

- (b) Project Co shall complete or cause the completion of the Utility Works as a precondition to achieving Substantial Completion. Project 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 20.13 or in Section 16.10.
- (c) The Project Co Utility Works shall be reviewed, certified, financed and paid for as part of Earned Value in accordance with Schedule 20 – Construction Period Payments. The Utility Company Self-Performed Works shall be reviewed, certified, financed and paid for in accordance with this Section 20.13. Project Co shall not be required to obtain financing for the costs of the Utility Company Self-Performed Works.
- (d) Prior to entering into a Utility Agreement for the performance of Utility Company Self-Performed Work, Project 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 and approval by the City. The City may, in conjunction with Project Co, for a period not to exceed 10 Business Days from receipt of the draft agreement, engage with the Utility Company to negotiate final scope and pricing for inclusion in the Utility Agreement based upon preferential pricing arrangements which the City may have with the applicable Utility Company, and notify Project Co by the end of such 10 Business Day period of the results of such discussions, and the City’s approval of the final scope and pricing to be contained in the applicable Utility Agreement. Project Co shall enter into the Utility Agreement on such City approved terms. 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 subsection 21.13(d). Failure for the City to provide comments on the draft agreements within the 10 Business Day period mentioned above will be deemed an acceptance of such draft by the City.
- (e) 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 Project 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 Project Co or any Project Co Party, the City shall pay such additional cost, plus applicable HST and the applicable Utility Works Fee applicable to such additional cost.
- (f) The City shall also pay Project 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.
- (g) Project 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 Project Co Utility Works in accordance with Schedule 20 – Construction Period Payments, but shall be presented separately for processing and payment by the City.

- (h) Project 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 20.13.
- (i) Project 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 Project Co in connection with the Utility Company Self-Performed Works. Each Request for Utility Works Payment submitted to 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.
- (j) Within 10 Business Days of receipt of a Request for Utility Works Payment, the City shall, in consultation with the Independent Certifier, advise Project 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 either the City, or the Independent Certifier determine that the Request for Utility Works Payment does not contain the information that the City or the Independent Certifier require, acting reasonably, to discharge their obligations under this Section 20.13. If the City withholds its approval pursuant to this Section 20.13(j) and subsequently receives the information that the City requires, acting reasonably, to discharge its obligations under this Section 20.13, 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 20.13 shall be resolved in accordance with Schedule 26 – Dispute Resolution Procedure.
- (k) 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.
- (l) Project 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 Project Co or any Subcontractor in connection with the Utility Company Self-Performed Works shall be to the credit of the City.

20.14 Category 1 Utility Company Tracking System

- (a) Project 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) Project 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 20.14(a)(iii)(A) and Section 20.14(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, Project Co shall not be entitled to the Delay Event or Compensation Amount pursuant to Section 38.1(a)(xxii) unless the tracking system as described in this Section 20.14(a) is fully functional and available to the City, provides notice to the City of the milestones described in Section 20.14(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.

20.15 Documents

- (a) For the duration of the Works, Project Co shall keep one copy of the current digital files of the Project Agreement, Project Documents, Works Schedule, submittals, reports, Variation Confirmations, Project 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 and the City Representative.
- (b) Project 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 for the duration of the Works.

21. ACCESS AND MONITORING

21.1 Access for City Parties

- (a) Subject to Section 21.1(b), but without limiting any of the City's rights in respect of the Lands, the System Infrastructure or the New Municipal Infrastructure, or the right of any third party in relation to that third party's portion of the Lands or New Municipal Infrastructure, Project Co acknowledges and agrees that throughout the Project Term, Project Co shall not restrict the access of the City, the City Parties, the Operator, and their respective representatives, to the Lands, the System Infrastructure or the New Municipal Infrastructure and 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.
- (b) In exercising their access rights under Section 21.1(a) in respect of the Lands, the City, City Parties, the Operator and their respective representatives shall:
 - (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 City Parties); and
 - (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 Project Co Representative from time to time.

21.2 Increased Monitoring

- (a) If, at any time during the Project Term, the City is of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Output Specifications and the Project Co Proposal Extracts), the City may, without prejudice to any other right or remedy available to it, by Notice to Project Co, increase the level of monitoring of Project 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 Project Co shall have demonstrated, to the City's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations under this Project Agreement. Project Co will compensate the City for any reasonable costs incurred as a result of such increased monitoring.

21.3 Right to Uncover

- (a) Project 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 Project Co does not provide such Notice and opportunity, Project 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. Project 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 during the Project Term, to request Project Co to uncover and inspect (or allow the City to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where the City reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When the City makes such a request, the City shall include reasonably detailed reasons with such request.
- (c) If an inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to the City and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (d) If an inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, the exercise by the City of its rights pursuant to this Section 21.3:
 - (i) prior to Substantial Completion shall, subject to and in accordance with Section 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event; and
 - (ii) following Substantial Completion shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.
- (e) The obligations in Section 21.3(a) shall not apply to the Revenue Vehicle Supplier.

21.4 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by the City or the City Representative of the rights under this Section 21 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Section 21.

21.5 Access by Others

- (a) Subject to Section 21.5(b) and subject to and in accordance with Section 9.8 (to the extent applicable), Project 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, System Infrastructure or the New Municipal 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 any counterparty to a Third Party Access Agreement, 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, provided that, wherever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations;
 - (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), Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations;
 - (v) any City Party, Other Contractors, owners or operators of third party facilities, Governmental Authorities, Emergency Service Providers and Utility Companies for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Lands, the System Infrastructure or the New Municipal 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, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations; and
 - (vi) any City Party to undertake emergency training in relation to the System Infrastructure or the New Municipal Infrastructure.
- (b) Subject to Section 21.5(c), the City shall require persons accessing Site(s) on the Lands in accordance with access rights under Section 21.5(a) to:
- (i) provide reasonable prior Notice to Project 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 Project Co Representative from time to time; and
 - (iii) if reasonably required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.
- (c) Section 21.5(b) shall not apply,
- (i) to Additional Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Section 9.8;
 - (ii) in the case of access rights described in Section 21.5(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 21.5(b) are inconsistent with the requirements of the applicable Governmental Authority or Emergency Service Provider.

21.6 Public Use

- (a) Project Co shall have no right to grant, to the general public, the right to use either the System Infrastructure or the New Municipal Infrastructure. It shall be the right of the City to grant the right of use to the general public to the System Infrastructure and the New Municipal Infrastructure once completed in accordance with the provisions of this Project Agreement.
- (b) Except as explicitly permitted by the City or this Project Agreement, and subject to Project Co's compliance with all applicable Permits, Licences, Approvals and Authorizations, Project Co shall,
 - (i) minimize interference with the existing transit system at all times during the Construction Period; and
 - (ii) to the extent that the Project necessitates interference, in any way, with the operation of the existing transit system, including the imposition of any closures or detours on the existing transit system, use commercially reasonable efforts to cooperate with the City and other relevant third parties to ensure the continued operation of the existing transit system.
- (c) Except as otherwise expressly provided in this Project Agreement, Project Co shall not have any claim whatsoever against the City, any City Party, Emergency Service Providers or any other Governmental Authority for, or in respect of, any lane closure or diversion, including any lane 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 System Infrastructure or the New Municipal Infrastructure, at any time.
- (d) Subject to closures or diversions of traffic flow permitted by this Project Agreement, Project Co shall cause all Works and Maintenance and Rehabilitation Services to be carried on so as not to interfere unnecessarily with, and so as to minimize any necessary interference with, 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 (other than the System Infrastructure and the New Municipal Infrastructure), whether under the control or in the possession of the City or any other person.

22. WORKS SCHEDULE

22.1 Completion of Works

- (a) Project Co shall complete the Works in accordance with this Project Agreement and achieve:
 - (i) Substantial Completion by the Scheduled Substantial Completion Date; and
 - (ii) Final Completion by the Scheduled Final Completion Date.

22.2 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 9.2(a)(viii), 9.8(f)(ii), 9.8(f)(iii), 11.2(d), 20.1(a)(iv), 20.5(a)(iii) and 27.4(a)(i) of the Project Agreement; Sections 3.1(c)(ix) of Schedule 17 – Environmental Obligations; Section 1.6(b)(vii) of Schedule 21 - Variation Procedure; and Sections 1(b) and 1(c) of Schedule 31 – Works Report Requirements.
- (b) Project Co shall, in accordance with Schedule 12 – Works Scheduling Requirements, prepare and submit to the City and the Independent Certifier:
 - (i) within 75 days after Financial Close, PBS-2 and a schedule narrative in accordance with Section 2.3 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 until Final Completion, the Monthly Progress Report and PBS Update in accordance with Schedule 31 – Works Reports Requirements;
 - (iii) within 10 Business Days after receipt of a written request from the City, acting reasonably, a Micro-Works Schedule for any specific area in accordance with Schedule 12 – Works Scheduling Requirements; and
 - (iv) Recovery Schedules, PBS Submittal, Look-ahead Schedules and As-built Schedules in accordance with Schedule 12 – Works Scheduling Requirements,each meeting the requirements of Schedule 12 – Works Scheduling Requirements to the satisfaction of the City that support the completion of the Works in accordance with Section 22.1.
- (c) The City shall review all submissions in accordance with Schedule 10 – Review Procedure.
- (d) At the request of the City Representative, the Project Co Representative shall review the Works Schedules with the City Representative to explain to the City Representative’s 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) Project 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 regards to any Works Schedule indicating potential Delay Events pursuant to Section 38.2(a) of the Project Agreement shall not constitute any acknowledgement or acceptance of the potential delay.

23. LEED, ENERGY AND ENVIRONMENTAL REQUIREMENTS

23.1 Environmental Management / Contamination and Hazardous Substances

- (a) Project Co shall comply with the provisions of Schedule 17 - Environmental Obligations.

23.2 LEED Design and Construction Obligations

Project Co shall perform the Works relating to the New Walkley Yard so as to achieve the prerequisites and credits required to achieve LEED® Canada Certified and, except as set out in the Output Specifications, Project Co may, in its sole discretion, determine which additional credits to pursue.

23.3 Mandatory Prerequisites and Credits

- (a) Project Co shall, at a minimum, achieve the credits and prerequisites under the LEED Rating System provided for in the Output Specifications.
- (b) Project Co shall, at a minimum, achieve the “Credit 1 Optimize Energy Performance under Performance Category: Energy & Atmosphere” credit, and obtain a minimum of 5 points in respect of such credit.

23.4 LEED Progress Reports

As part of each Works Report, Project Co shall submit a progress report comparing actual construction and procurement activities with LEED® Canada Certified requirements.

23.5 LEED Certified Rating

- (a) If there is a change in the requirements for achievement of LEED® Canada Certified under the LEED Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify the City of such change and such change shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.
- (b) Project Co shall apply to the CaGBC to obtain LEED® Canada Certified for the New Walkley Yard as soon as possible.
- (c) In the event that:
- (i) Project Co fails to obtain the minimum number of points required pursuant to Section 23.3(b); or
 - (ii) LEED® Canada Certified is not obtained within 24 months after the Substantial Completion Date,

other than as a direct result of any act or omission of the City or any City Party, Project Co shall pay to the City liquidated damages in the amount of \$[REDACTED]. 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 either of the specified events and would be difficult or impossible to quantify upon the happening of either of the specified events. Such payment shall constitute full and final settlement of any and all damages that may be claimed by the City as a result of a failure by Project Co to obtain the minimum number of points required pursuant to Section 23.3(b) or to achieve LEED® Canada Certified and, for greater

certainty, a failure by Project Co to obtain any of the mandatory prerequisites or credits set out in the Output Specifications or to achieve LEED® Canada Certified for the New Walkley Yard shall not result in a Project Co Event of Default. 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.

23.6 Greenhouse Gas Credits

- (a) Any greenhouse gas credits which may be guaranteed as a result of the Project shall be owned by the City and Project Co shall have no entitlement to any of such credits whatsoever.

24. INDEPENDENT CERTIFIER

24.1 Appointment

- (a) On or prior to Financial Close, the Parties shall appoint an independent, 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 24.7(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 Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

24.2 Role of Independent Certifier

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

24.3 Changes to Terms of Appointment

- (a) Neither the City nor Project 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.

24.4 Right to Change Appointment

- (a) The Parties agree that the Independent Certifier shall not provide any services or reports or other information to Project Co, the Lenders, the Project 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 24.7, 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.

24.5 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.

24.6 Payment of Independent Certifier

- (a) Project Co and the City shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.

24.7 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 5 Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
- (i) each Party shall, within 5 Business Days thereafter, select 3 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 26 - Dispute Resolution Procedure.

25. COMMISSIONING AND COMPLETION

25.1 Commissioning Activities

- (a) Project Co shall perform all Commissioning, and shall support and facilitate, as necessary, the performance of all City Commissioning, if any, pursuant to the Testing and Commissioning Plan.

25.2 Commencement of Commissioning

- (a) Project Co shall give 30 days' written Notice to the Independent Certifier and the City Representative of the proposed commencement of the Commissioning Tests.
- (b) Project Co shall give at least 5 Business Days' Notice to, and shall invite, the Independent Certifier and the City Representative to witness, and to comment on, each aspect of the Commissioning. Project Co shall, together with such Notice, 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.

25.3 Substantial Completion Certificate

- (a) Subject to Section 25.4, Project Co shall give the Independent Certifier and the City Representative at least 10 Business Days' Notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice.
- (b) Project Co shall give the Independent Certifier and the City Representative Notice (the "**Substantial Completion Notice**") and upon the satisfaction of all requirements for Substantial Completion, which Substantial Completion Notice shall, describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied.
- (c) The City shall, within 5 Business Days after receipt of a Substantial Completion Notice, provide the Independent Certifier and Project Co with the City's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Substantial Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of the City's opinion pursuant to Section 25.3(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the

opinions of both Project Co and the City, to determine whether any Minor Deficiencies exist, and to issue to the City and to Project Co either:

- (i) the 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 25.7; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.3(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 26 - Dispute Resolution Procedure, Project 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 Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Substantial Completion Notice and Sections 25.3(c) to (e), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.

- (f) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Payment Commencement Date, and a Dispute in relation to the Payment Commencement Date shall not be subject to resolution pursuant to Schedule 26 - 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 Dispute Resolution Procedure.

25.4 Substantial Completion Countdown Notice and Liquidated Damages for Failure to Achieve Substantial Completion

- (a) Project Co shall deliver to the City and the Independent Certifier a Notice (a "**Substantial Completion Countdown Notice**") not less than 180 days prior to (i) the Scheduled Substantial Completion Date, if Project Co anticipates that Substantial Completion will be achieved by or after the Scheduled Substantial Completion Date or (ii) such other date on which Project Co anticipates that Substantial Completion will be achieved, if Project Co anticipates that Substantial Completion will be achieved prior to the Scheduled Substantial Completion Date (in each case, the "**Anticipated Substantial Completion Date**").
- (b) [Not used].

- (c) In the event that Project Co has not provided a Substantial Completion Countdown Notice to the City in accordance with the requirements of Section 25.4(a), then Project shall,
- (i) within 3 Business Days after the date that the Substantial Completion 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 Project Co's failure to deliver the Substantial Completion 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 Project Co's failure to deliver such notice for each day after the date that the Substantial Completion Countdown Notice was to have been delivered to the City that the Substantial Completion Date Notice has not been delivered to the City in accordance with the requirements of Section 25.4(a).
- (d) In accordance with Schedule 12 – Works Scheduling Requirements, any Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date, without the prior written consent of the City, in its sole discretion.
- (e) Notwithstanding any other provision of this Project Agreement, if Project Co has not achieved Substantial Completion by the Outside Substantial Completion Date, as such date may be extended in accordance with Section 38, Project Co shall, in addition to any other liquidated damage payment obligations incurred under this Section 25.4, pay to the City the sum of \$[REDACTED] as liquidated damages in respect of damages suffered and costs incurred by the City related to Project Co's failure to achieve Substantial Completion by such date.
- (f) In the event that Project Co provides a Substantial Completion Countdown Notice establishing an Anticipated Substantial Completion Date in accordance with Section 25.4(a), or otherwise provides notice of an Anticipated Substantial Completion Date in accordance with the provisions of this Section 25.4 (the “**Initial Countdown Notice**”), but Project Co determines following such notification that Substantial Completion shall not be achieved on or before the Anticipated Substantial Completion Date established by such notices as aforesaid, Project Co shall forthwith notify the City in writing in respect thereof (the “**Subsequent Notice**”) and shall:
- (i) in such Subsequent Notice establish a revised date by which Project Co expects to achieve Substantial Completion (the “**Revised Substantial Completion Date**”), which Revised Substantial Completion Date shall be no earlier than,
 - (A) the Anticipated Substantial Completion Date established by the Initial Countdown Notice, and
 - (B) 15 days after the delivery of such Subsequent Notice;
 - (ii) pay to the City, as liquidated damages in respect of damages suffered and costs incurred by the City related to Project Co's failure to achieve Substantial Completion by the Anticipated Substantial Completion Date established as aforesaid, the following sums:

- (A) If the Subsequent Notice is delivered between 1 and 29 days of the delivery of the Initial Countdown Notice, the sum of \$[REDACTED];
 - (B) If the Subsequent Notice is delivered between 30 and 59 days of the delivery of the Initial Countdown Notice, the sum of \$[REDACTED];
 - (C) If the Subsequent Notice is delivered between 60 and 89 days of the delivery of the Initial Countdown Notice, the sum of \$[REDACTED];
 - (D) If the Subsequent Notice is delivered between 90 and 119 days of the delivery of the Initial Countdown Notice, the sum of \$[REDACTED];
 - (E) If the Subsequent Notice is delivered between 120 and 149 days of the delivery of the Initial Countdown Notice, the sum of \$[REDACTED];
 - (F) If the Subsequent Notice is delivered more than 149 days of the delivery of the Initial Countdown Notice, the sum of \$[REDACTED].
- (iii) Notwithstanding Section 25.4(f)(ii), Project Co may, on one occasion only, issue a Subsequent Notice establishing a Revised Substantial Completion Date which is no later than 10 days after the Anticipated Substantial Completion Date without incurring the liquidated damages set out in Section 25.4(f)(ii) in whole or in part.
- (g) In the event that Project Co fails to achieve Substantial Completion by the Anticipated Substantial Completion Date without having delivered to the City a Subsequent Notice, or in the event that Project Co has issued a Subsequent Notice establishing a Revised Substantial Completion Date and Project Co fails to achieve Substantial Completion by such Revised Substantial Completion Date, without having delivered a further Subsequent Notice, then Project shall:
- (i) forthwith issue a Subsequent Notice to the City establishing a further revised date by which Project Co expects to achieve Substantial Completion (the “**Further Revised Substantial Completion Date**”), which Further Revised Substantial Completion Date shall be no earlier than 15 days after the delivery of such Subsequent Notice;
 - (ii) within 3 Business Days after the Anticipated Substantial Completion Date or the 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 Project Co’s failure to achieve Substantial Completion and deliver notice thereof in a timely manner; and
 - (iii) If the Subsequent Notice in paragraph 25.4(g)(i) has not been delivered by Project Co, pay to the City the additional sum of \$[REDACTED] per calendar day for each day after the Anticipated Substantial Completion Date or the Revised Substantial Completion Date, as the case may be, that such Subsequent Notice in respect of the 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 Project Co’s failure to deliver such notice.

- (h) The provisions of this Section 25.4 shall repeat, *mutatis mutandis*, until such time as Project Co has achieved Substantial Completion or the Project Agreement has been terminated, whichever is the first to occur.
- (i) The Parties agree that the liquidated damages set out in this Section 25.4 are not a penalty but represent a genuine and reasonable pre-estimate of the damages that will be suffered by the City related to Project Co's failure to comply with and observe the provisions of this Section 25.4.
- (j) Project Co acknowledges and agrees that all liquidated damages set out in this Section 25.4 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. Project Co further agrees that it is, and shall be, estopped from alleging that any liquidated damages set out in this Section 25.4 are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages were not incurred.
- (k) 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 liquidated damages pursuant to this Section 25.4 unless and until such Dispute is resolved in accordance with the Dispute Resolution Procedure outlined in Schedule 26 – Dispute Resolution Procedure and, if resolved in favour of the City, the provisions respecting liquidated damages contained in this Section 25.4 shall apply with retroactive effect, except that there shall be added to the amount payable by Project Co on account of liquidated damages, the Payment Compensation Amount from the date the liquidated damages were required to be paid in the absence of the Dispute to the date of payment.
- (l) Notwithstanding any other provision of this Project Agreement, the payment of the liquidated damages amount pursuant to paragraph 25.4(e) shall not reduce the maximum amount of liability of Project Co as provided for in Section 55.4 of the Project Agreement.

25.5 City Commissioning

- (a) The Parties acknowledge that the City may perform City Commissioning both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall not restrict the City, and any of its employees and subcontractors from full access to the Lands, the System Infrastructure and the New Municipal Infrastructure and all relevant parts thereof at such times as may be set out in the Testing and Commissioning Plan to enable the City to undertake any City Commissioning in accordance with the Testing and Commissioning Plan. The City shall comply, and shall ensure that all other City Parties comply with the directions, procedures and safety guidelines established by Project Co for the Lands, the System Infrastructure and the New Municipal Infrastructure and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing any City Commissioning.
- (b) The City acknowledges that, during the City Commissioning Period, Project Co and its Subcontractors will be active on the Lands, the System Infrastructure and the New Municipal Infrastructure in both the rectification of Minor Deficiencies and the completion of Commissioning Tests, and the City shall take commercially reasonable steps to allow such activities to proceed in accordance with the Testing and Commissioning Plan.

- (c) Project Co acknowledges that, prior to and during the City Commissioning Period, Project Co and its Subcontractors shall cooperate with the City and all other City Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the City Commissioning activities are able to be completed in the timeframe for completion set out in the Testing and Commissioning Plan.

25.6 [Intentionally Deleted]

25.7 Minor Deficiencies

- (a) In the event that Minor Deficiencies exist when Project Co gives a Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and the City, shall, within 15 Business Days of Project Co's application, prepare a list of all Minor Deficiencies (the "**Minor Deficiencies List**") identified at that time and an estimate of the cost for the City and the time for Project Co to complete and rectify such Minor Deficiencies. The City may withhold from the 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 Minor Deficiencies (the "**Completion Holdback**"), which holdback shall be held in an interest bearing account.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any lane or track closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the System Infrastructure and the New Municipal Infrastructure or the relevant portion thereof, or disruption of the Project Operations or of the operations of the City, any City Party, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic and Transit Management Plan.
- (c) The Independent Certifier must prepare the Minor Deficiencies List in relation to the Substantial Completion Notice as soon as reasonably practicable and, in any event, before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) No later than 20 Business Days prior to the Anticipated Substantial Completion Date, the City may direct the Independent Certifier to amend, in consultation with Project Co and the City, the Minor Deficiencies List on one occasion to include a list of any and all Minor Deficiencies that were identified after the preparation of, or not included in, the Minor Deficiencies List pursuant to Section 25.7(a). The Independent Certifier shall prepare the amended Minor Deficiencies List as soon as reasonably practicable and, in any event, within 10 Business Days of 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 25.7 to 25.9 inclusive. The amount of the Completion Holdback shall not be affected by the amended Minor Deficiencies List.
- (e) Where the Independent Certifier has been directed by the City to amend the Minor Deficiencies List pursuant to Section 25.7(d), the Independent Certifier shall specify commercially reasonable completion and rectification times for any newly added Minor Deficiencies.

- (f) The City may, in its sole discretion, waive any requirement for Substantial Completion, and the failure to meet any such requirement shall constitute a Minor Deficiency.
- (g) Nothing in this Section 25.7 shall prevent the City from making any adjustments to the Monthly Service Payments in accordance with Schedule 19 – Payment Mechanism following expiry of the period of time granted to Project Co to rectify the relevant Minor Deficiency, as set out in Section 25.8(a)(i) or 25.8(a)(ii), as applicable.

25.8 Rectification of Minor Deficiencies

- (a) Project Co shall, in consultation with the City Representative and so as to minimize, to the greatest extent reasonably possible, any lane or track closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the System Infrastructure and the New Municipal Infrastructure or any portion thereof or disruption of the Project Operations or of the operations of the City, any City Party, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic and Transit Management Plan, complete and rectify all Minor Deficiencies:
 - (i) within 180 days of the issuance of the Minor Deficiencies List pursuant to Section 25.7(a) for all Minor Deficiencies where no time for completion and rectification has been specified by the Independent Certifier; or
 - (ii) within the time for completion and rectification of any Minor Deficiency where such a time was specified by the Independent Certifier in the Minor Deficiencies List.
- (b) Project 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 System Infrastructure and the New Municipal Infrastructure or any portion thereof and to ensure compliance with the Traffic and Transit Management Plan.

25.9 Failure to Rectify Minor Deficiencies

- (a) If Project Co fails to complete and rectify any Minor Deficiency within the time for its completion and rectification specified in Section 25.8, the City may engage others to perform the work necessary to complete and rectify such Minor Deficiency at the risk and cost of Project Co, and the City may deduct such cost from the Completion Holdback and interest accrued thereon.
- (b) Within 2 Business Days of Final Completion, the City shall release to Project Co the Completion Holdback (less any amounts deducted in accordance with Section 25.9(a)), together with all interest accrued thereon and applicable HST. Where the City exercises its rights pursuant to 25.9(a), if the cost of such completion and rectification exceeds the amount of the Completion Holdback and interest, then Project Co shall reimburse the City for all such excess cost.

25.9A Final Completion Countdown Notice

- (a) Project Co shall deliver a notice (the “**Final Completion Countdown Notice**”) to the City and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the

Scheduled Final Completion Date) on which Project Co anticipates that Final Completion will be achieved (the “**Anticipated Final Completion Date**”).

- (b) The Final Completion Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Final Completion Date. If Project Co fails to deliver the Final Completion Countdown Notice not less than 90 days prior to the Scheduled Final Completion Date, the Anticipated Final Completion Date shall be deemed to be the same date as the Scheduled Final Completion Date.

25.10 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the City Representative at least 10 Business Days’ Notice prior to the date upon which Project Co anticipates delivering the Final Completion Notice.
- (b) Project Co shall give the Independent Certifier and the City Representative Notice (a “**Final Completion Notice**”) upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail:
 - (i) the items of minor work of a seasonal nature that cannot be completed prior to the Final Completion Date, if any, and the time for completion of such work as agreed between the City and Project Co, each acting reasonably; and
 - (ii) the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies other than any outstanding seasonal work identified in the Final Completion Notice, and the submission of all records and data as set forth in the Commissioning Program, together with Project Co’s opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied.
- (c) The City shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with the City’s opinion as to whether the conditions for issuance of Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co’s receipt of the City’s opinion pursuant to Section 25.10(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and the City, and to issue to the City and to Project Co either:
 - (i) the Final Completion Certificate, confirming the date of issue as the Final Completion Date; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate, including any items on the Minor Deficiencies List which remain outstanding.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.10(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with

Schedule 26 - Dispute Resolution Procedure, Project 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 Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 25.10(c) to (e), inclusive, shall be repeated until the Final Completion Certificate, has been issued.

- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.
- (g) If, within 30 days after the time specified in the Final Completion Notice for completion of seasonal work, Project Co has failed to complete such seasonal work, the City may engage others to perform the work necessary to complete the seasonal work, at the risk and cost of Project Co. Project Co shall pay to the City the costs incurred by the City to complete such seasonal work within 10 Business Days of presentation of an invoice for such costs.

25.11 Effect of Certificates/Use

- (a) The issue of a Substantial Completion Certificate or the Final Completion Certificate, the commencement of use by the City or the public of any part of the System Infrastructure under the terms of this Project Agreement or the commencement of any Governmental Activities shall, in no way:
 - (i) limit the obligations of Project 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 25.7(d); or
 - (ii) be construed as an approval by the City of the Works or the way in which they have been carried out.

25.12 Post-Completion Survey

- (a) Not more than 90 days after the Final Completion Date, Project Co, at its own cost and expense, shall prepare and submit to the City a reference plan of survey for the System Infrastructure built:
 - (i) on or within the City Road Allowance, identifying the location of the System Infrastructure together with a certain distance calculated from the outer boundary of such System Infrastructure, as well as all encumbrances and encroachments; and

- (ii) at the Stations, identifying the location of the System Infrastructure as well as all encumbrances and encroachments.
- (b) The reference plan of survey set out in Section 25.12(a) shall be prepared by a duly qualified Ontario Land Surveyor.
- (c) The reference plans of survey prepared and submitted by Project Co in accordance with Sections 25.12(a) and 25.12(b) that pertain to any below grade System Infrastructure and the New Municipal Infrastructure on the City Road Allowance or at the Stations (as the case may be) shall be a strata plan showing such System Infrastructure and the New Municipal Infrastructure as three dimensional parts on such reference plan. The reference plan of surveys shall be sufficient for conveyancing purposes and be in registrable form. Project Co, at its expense, shall correct or amend the reference plans if required by the City for purposes of depositing them on title, which corrections and amendments shall be made by Project Co within thirty (30) days after receipt of a Notice from the City.

25.13 New Municipal Infrastructure Works

- (a) Project Co shall achieve all New Municipal Infrastructure Works Acceptances by the Scheduled 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 Project 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 Authorizations, 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) Project 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 Project 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. Project Co shall give the City Engineer and the City Representative at least 10 Business Days’ notice prior to the date upon which Project Co anticipates all requirements for New Municipal Infrastructure Component Acceptance shall be satisfied.
- (d) Project 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 Project 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 49 and Schedule 35 – 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 Project Co Permits, Licences, Approvals and Authorizations obtained and/or entered into in connection with the New Municipal Infrastructure Works in PDF or CADD format;
 - (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 25 – 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 Project 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 Project 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 25.13(d)(vi)(B) above, Project 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 Project Co shall perform all such additional rectification actions and testing in a timely manner. Upon completion thereof, Project Co may give a further New Municipal Infrastructure Component Acceptance Notice and Section 25.13(c) to (e) inclusive shall be repeated until the New Municipal Infrastructure Component Acceptance Certificate has been issued.

- (f) Notwithstanding the provisions of Section 25.13(e), in respect of the New Municipal Infrastructure components consisting of the Earl Armstrong Bridge and Leitrim Bridge structures, and the Park and Ride facilities at Bowesville and Leitrim stations, as well as the South Keys Fare Control building (all as described in the Output Specifications [which are important to the Works Schedules for the Project, the City Engineer may, upon the request and in consultation with Project Co, and being satisfied that the components have been completed to a point which would allow their use notwithstanding that they remain incomplete, accept the handover to and conditional acceptance by the City of, and permit the issuance of a conditional New Municipal Infrastructure Component Acceptance Certificate (a “**Conditional New Municipal Infrastructure Component Acceptance Certificate**”) to Project Co for, such New Municipal Infrastructure components, which would stipulate the deficiencies or incomplete items in such

New Municipal Infrastructure components (the “**NMI Minor Deficiencies**”) that would have to be corrected or completed before a final New Municipal Infrastructure Component Acceptance Certificate could be issued for such components. The Conditional New Municipal Infrastructure Component Acceptance Certificate would stipulate the schedule for the completion and rectification of the NMI Minor Deficiencies, and provide for an amount equal to **[REDACTED]**% of the amount estimated by the City Engineer to complete and rectify all NMI Minor Deficiencies (the “**NMI Minor Deficiency Deduction**”) to be deducted from the Earned Value calculation for such New Municipal Infrastructure components until the NMI Minor Deficiencies have been satisfactorily completed. Following completion of all of the NMI Minor Deficiencies to the satisfaction of the City Engineer, a final New Municipal Infrastructure Component Acceptance Certificate shall be issued in respect of the applicable components of the New Municipal Infrastructure, and the NMI Minor Deficiency Deduction shall be certified for payment in the Earned Value calculations.

- (g) On each New Municipal Infrastructure Component Acceptance Date in respect of each New Municipal Infrastructure Component:
- (i) Project 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 commercially reasonable, 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 53.1, Project 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) Project 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 Project Co under this Project Agreement which is included in the New Municipal Infrastructure Components; and
 - (iv) subject to Section 49 and Schedule 35 - Intellectual Property, all information obtained by Project 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;
- (h) Subject to the warranty obligations described below, the issuance by the City Engineer in accordance with Section 25.13(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.

- (i) After all final New Municipal Infrastructure Component Acceptance Certificates for all New Municipal Infrastructure Components have been delivered by the City Engineer to Project Co, Project 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 Project Co the Final New Municipal Infrastructure Works Acceptance Certificate.
- (j) Project 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**”).

25.14 Warranties on New Municipal Infrastructure

- (a) Project Co warrants that the New Municipal Infrastructure Works (i) shall conform to the specifications set out in Schedule 15 in all respects as it relates to the New Municipal Infrastructure, (ii) shall otherwise comply with the requirements and Project Co obligations applicable to all New Municipal Infrastructure Works and other Works (insofar as they relate to the New Municipal Infrastructure Works), (iii) shall be new, of good quality material as described in the Project Agreement, and (iv) shall be free of defects in materials, equipment and workmanship and the obligations of this Project Agreement shall apply *mutadis mutandis* to each New Municipal Infrastructure Component for a period or two (2) years from the New Municipal Infrastructure Acceptance Date in respect of such New Municipal Infrastructure Component, and Project Co shall extend the warranty on replaced parts and workmanship replaced during the initial warranty period as it relates to such New Municipal Infrastructure Component to the later of (y) six (6) months from the date of acceptance of the replacement parts and/or workmanship by the City acting reasonably, or (z) the expiry date of the initial warranty period in respect of such New Municipal Infrastructure Component.
- (b) If Project Co fails to perform its obligations set out in Section 25.14(a) in the time specified or subsequently agreed upon, without prejudice to any other right or remedy the City may have under the Project Agreement, the City may correct such New Municipal Infrastructure Works and/or other work described in Section 25.13 and any damage to the Lands on which the New Municipal Infrastructure Works have been performed by Project Co or a Project Co Party and deduct the cost and expense thereof from any holdback amount held by the City or from any payment then or thereafter due to Project Co under the Project Agreement.

25.15 Interim Substantial Completion

(a) In the event that either:

- (i) the first New Revenue Vehicle has not been Delivered on or before the date which is 120 days prior to Scheduled Substantial Completion, or
- (ii) the entire Fleet (as defined in the Revenue Vehicle Supply Contract) has not been Delivered on or before the date which is 60 days prior to Scheduled Substantial Completion,

and in each case, Project Co is ready to receive, and capable of receiving, Delivery of such New Revenue Vehicles (collectively, the “**Interim Substantial Completion Conditions**”), Project Co shall provide prompt notice (and in any event within two (2) Business Days of such dates referenced above) confirming the Interim Substantial Completion Conditions (the “**Interim Substantial Completion Notice**”) to the City Representative. Following the issuance of the Interim Substantial Completion Notice, Project Co shall only be required to achieve Interim Substantial Completion on or prior to the Scheduled Substantial Completion Date and all references herein (other than those references in this Section 25.15 and the definition of Substantial Completion in Schedule 1) to Substantial Completion, Substantial Completion Date and Substantial Completion Certificate shall be automatically amended and read as references to Interim Substantial Completion, Interim Substantial Completion Date and Interim Substantial Completion Certificate such that all other requirements that would have been required to be performed by the City or Project Co in connection with, or as a result of, Substantial Completion shall be performed in connection with, or as a result of, Interim Substantial Completion.

(b) In the event Project Co delivers a valid Interim Substantial Completion Notice:

- (i) Project Co shall complete the Remaining Works forthwith upon Delivery of the relevant New Revenue Vehicles and such Remaining Works shall form part of and be required to have been completed in connection with Final Completion;
- (ii) the then current date specified as the Scheduled Substantial Completion Date shall automatically be amended and read as the date prior to which Project Co will achieve Interim Substantial Completion;
- (iii) any Substantial Completion Countdown Notice previously delivered pursuant to Section 25.4 shall be deemed to be a notice of Project Co’s anticipation to achieve Interim Substantial Completion and the Anticipated Substantial Completion Date referenced therein shall be the date on which Project Co anticipates the achievement of Interim Substantial Completion; and
- (iv) the City and Project Co shall enter into a Variation with respect to the Maintenance and Rehabilitation Services as more particularly described in Section 7 of Schedule 19 - Payment Mechanism.

26. MAINTENANCE AND REHABILITATION SERVICES

26.1 Overall Responsibility

- (a) Project Co shall, following the Substantial Completion Date, perform the Maintenance and Rehabilitation Services:
- (i) so as to satisfy the Output Specifications;
 - (ii) in accordance with the Project Co Proposal Extracts;
 - (iii) in accordance with Good Industry Practice;
 - (iv) in accordance with the Maintenance Plan; and
 - (v) in accordance with the other terms of this Project Agreement.
- (b) During the Maintenance Period, the City may, from time to time, grant a licence or licences for the temporary use of any Station Plaza or portion thereof for use as special event space (a “**Station Plaza Licence**”) to a person or persons (each, a “**Station Plaza Licencee**”). The City’s granting of a license for temporary use of any Station Plaza by a Station Plaza Licencee shall be in accordance with the following:
- (i) The City shall consult with Project Co from time to time with a view to considering Project Co’s recommendations regarding permitted uses, permitted times of day and days of the week, maximum number of people, and other appropriate restrictions on the temporary use of the Station Plazas;
 - (ii) If the City intends to grant a Station Plaza Licence, the City shall give Project Co Notice setting out the proposed terms of such Station Plaza Licence. Project Co may provide comments, if any, to the City for its consideration, which the City will take into account, acting reasonably. The City shall advise Project Co if in the City’s opinion, acting reasonably, any such Station Plaza Licence is likely to significantly impede Project Co from the performance of its obligations during the Maintenance Period or adversely affect safety and security;
 - (iii) In respect of Maintenance and Rehabilitation Services provided by Project Co exclusively in respect of Station Plaza Licences, the City shall pay to Project Co an amount equal to,
 - (A) Project Co’s Direct Costs, as defined in Appendix A to Schedule 21 – Variation Procedure; and
 - (B) Project Co’s applicable margins, as determined in accordance with Appendix B to Schedule 21 – Variation Procedure.
 - (iv) Project Co acknowledges and agrees that the granting of any Station Plaza Licence or Licences shall not, in and of itself, automatically entitle Project Co to a Variation; and

- (v) Project Co shall not prevent Station Plaza Licensees from occupying and using the Station Plazas in accordance with the terms of any such Station Plaza Licence;

26.2 Commencement of Maintenance and Rehabilitation Services

- (a) Project Co shall commence the Maintenance and Rehabilitation Services on the day immediately after the Substantial Completion Date and shall perform the Maintenance and Rehabilitation Services until the end of the Maintenance Period.

26.3 Equipment for Maintenance and Rehabilitation Services

- (a) Project Co will procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any equipment required by Project Co to perform the Maintenance and Rehabilitation Services.

26.4 No Closure of the System Infrastructure

- (a) During the Maintenance Period, Project Co shall not close all or a portion of the System Infrastructure in any circumstances other than as directed or approved by the City, acting reasonably.

26.5 Maintenance Plans

- (a) No later than 90 days prior to the Substantial Completion Date, Project Co shall submit to the City for review pursuant to Schedule 10 - Review Procedure, the Maintenance Plan for the first Contract Year, and shall update such plans as provided for in the Output Specifications annually thereafter.

26.6 Revisions to Maintenance Plan

- (a) No later than 30 days prior to the commencement of any calendar quarter, Project Co may submit to the City a revision to the applicable Maintenance Plan for the Contract Year in which the relevant calendar quarter falls showing the effect of the proposed changes. If Project Co is entitled to proceed with such changes pursuant to Schedule 10 - Review Procedure, then the Maintenance Plan as so amended shall become the Maintenance Plan in respect of that calendar quarter.

27. HUMAN RESOURCES

27.1 Admittance of Personnel

- (a) The City shall have the right to order the removal from the Lands, the System Infrastructure and the New Municipal Infrastructure of any person employed by (or acting on behalf of) Project Co, or any Project 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 at the Lands, the System Infrastructure and the New Municipal Infrastructure for any reason, including a failure to comply with any City policy or any immediate obligation of the City to ensure the safety and well-being of persons at the Lands, the System Infrastructure and the New Municipal Infrastructure.

27.2 Confirmation of Action

- (a) Any action taken under Section 27.1 shall promptly be confirmed by the City to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

27.3 Finality as to Admission

- (a) Any decision of the City made pursuant to Section 27.1 shall be final and conclusive.

27.4 Staff Competency

- (a) Project Co shall ensure that:
 - (i) there shall at all times be a sufficient number of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the performance of the Project Operations with the requisite level of skill and experience to perform the Project Operations 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 Project Co or any Project Co Party to complete the Works in accordance with the Works Schedule and to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in the Maintenance and Rehabilitation Services;
 - (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Operations 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 Project 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 Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Operations to ensure the proper performance of this Project Agreement.

27.5 Employee Training

- (a) Project Co shall and shall ensure all Project Co Parties establish and provide formal training programs and certification for the staff of Project Co and of all Project Co Parties required to be certified to perform specific tasks related to the Maintenance and Rehabilitation Services as required by any provincial or federal regulatory body. All training programs and activities shall be designed, developed, and implemented in accordance with established professional standards for performance based development. Project Co shall and shall ensure that all Project Co Parties consider all suggestions provided by the City to improve the training by Project Co and all Project Co Parties; however, the final decision on any training program is the responsibility of Project Co and the relevant Project Co Parties.

- (b) Project Co shall and shall ensure that the relevant Project Co Parties, upon the City's request, provide training program materials to the City for filing with regulatory agencies as and when required. All such training program materials or other documentation provided by Project Co and the relevant Project Co Parties shall be provided in both paper and digital formats, and shall be written in English.
- (c) Project Co and all Project Co Parties shall be responsible for the cost of all training and certification for all employees of Project Co and Project Co Party employees.

27.6 Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause such Project 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 Maintenance and Rehabilitation Services:
 - (i) are questioned concerning Relevant Convictions; and
 - (ii) are required to complete and deliver to Project Co a criminal records search form.
- (b) To the extent permitted by Applicable Law, Project Co shall, and shall cause each Project 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 Project Co or a Project Co Party is aware or ought to be aware, is allowed access to the Lands, the System Infrastructure or the New Municipal Infrastructure to perform any Maintenance and Rehabilitation Services, without the prior written consent of the City, in its sole discretion.
- (c) To the extent permitted by Applicable Law, Project Co shall ensure that the City is kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Maintenance and Rehabilitation Services 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 Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party). Project Co shall use commercially reasonable efforts to obtain, or to cause all Project 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 27.6.

27.7 Disciplinary Action

- (a) The City, acting reasonably, may notify Project Co of any Project Co or Project 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 so as to affect public confidence in the public transit system in the City of Ottawa or the Project. Upon

investigation, Project Co may institute, or cause the relevant Project 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.

27.8 Human Resources Policies

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all relevant matters relating to the Project Operations (including, for example, health and safety). Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirements, the City HR Policy 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 available to the City on a timely basis.

27.9 Management Organizations

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

27.10 Governmental Authority

- (a) Project Co shall ensure that it and all Project 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.

28. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS

28.1 Standards

- (a) Project Co shall cause the goods, equipment, consumables and materials used or supplied by it or any Contractor or Subcontractor in connection with the Project Operations to be:
 - (i) of good quality, fit for their intended purpose (other than to the extent a specific type of good, equipment, consumable or material is specified in the Output Specifications) 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 28.1(a).

28.2 Stocks

- (a) Project Co shall cause sufficient stocks of goods, consumables, equipment and materials to be held in compliance with its obligations under this Project Agreement.

29. DAMAGE AND DESTRUCTION

29.1 Restoration and Reinstatement of Damage or Destruction

- (a) Project Co shall protect (i) the Works, (ii) the property of the City on the Site and (iii) the System Infrastructure, in each case, from damage or destruction which may arise as a result of Project Co's performance of the Project Operations under this Project Agreement, and Project Co shall 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, if all or any part of,
- (i) the Works, including the System Infrastructure and New Municipal Infrastructure, is damaged or destroyed prior to the Substantial Completion Date in respect of the System Infrastructure, or prior to the applicable New Municipal Infrastructure Component Acceptance Date in respect of the relevant New Municipal Infrastructure Component, or by an act or omission of Project Co or any Project Co Party; or;
 - (ii) the property of the City on the Site, property adjacent to the Site, or the System Infrastructure is damaged or destroyed by an act or omission of Project Co or any Project Co Party,

Project Co shall, at its own cost and expense, Make Good and repair and replace the property of the City on the Site for which Project Co is responsible pursuant to (a) above, the property adjacent to the Site for which Project Co is responsible pursuant to in (a) above, the relevant New Municipal Infrastructure Component or the System Infrastructure 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 System Infrastructure or the New Municipal Infrastructure shall not terminate this Project Agreement or relieve Project Co of any of its obligations hereunder or entitle Project Co to any compensation from the City.

- (c) Project Co shall not undertake to repair and/or replace any damage or destruction whatsoever to adjacent property or any infrastructure owned by third parties without first consulting the City and receiving written instructions as to the course of action to be followed.

29.2 Reinstatement Plan

- (a) If the Reinstatement Work in respect of the System Infrastructure or New Municipal Infrastructure 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 Project Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Final Completion Date 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), Project 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, 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 Project 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 Project 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) Project Co’s proposed schedule for the execution of the Reinstatement Work; and
- (iii) the information required pursuant to Schedule 21 - Variations 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 to the extent necessary to address any Emergency or public safety needs.

29.3 Conduct of Reinstatement Work

- (a) Project Co shall cause the Reinstatement Work in respect of the System Infrastructure or New Municipal Infrastructure 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 Project 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 Project Co and a direct agreement with the City in substantially the same forms as the Construction Contract and the Construction Contractor’s Direct Agreement.
- (b) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 28 - Insurance Trust Agreement are available to carry out the Reinstatement Work in respect of the System Infrastructure or New Municipal Infrastructure, 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.

30. MONITORING AND PERFORMANCE AUDITS

30.1 Performance Audits

- (a) If the City reasonably believes that Project Co is in breach of its obligations with respect to Maintenance and Rehabilitation Services, including:
- (i) under Sections 26 and 27;
 - (ii) under the Output Specifications; or
 - (iii) in respect of any defects, deficiencies or items of outstanding work that should have been completed as part of the Works,
- then the City may cause to be performed, by an arm's length consultant appointed by the City, a performance audit, inspection and survey of the System Infrastructure to assess whether the System Infrastructure has been and is being maintained by Project Co in accordance with Project Co's obligations (the "**Performance Audit**").
- (b) The City shall notify Project Co in writing at least 10 Business Days prior to the date that the City wishes to cause a Performance Audit to be undertaken. The City shall, acting in good faith, consider any reasonable request by Project Co for the Performance Audit to be performed on an alternative date if such request is made by Project Co in writing at least 5 Business Days prior to the date originally requested by the City, on the basis that performing the Performance Audit on the date originally requested by the City would materially prejudice Project Co's ability to provide the Maintenance and Rehabilitation Services.
- (c) When causing any Performance Audit to be undertaken, the City shall use commercially reasonable efforts to minimize any disruption caused to the provision of the Maintenance and Rehabilitation Services. The cost of a Performance Audit, except where Section 30.1(e) applies, shall be borne by the City. Project Co shall provide the City, at no additional cost or charge, with any reasonable assistance required by the City from time to time during the Performance Audit.
- (d) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, the City shall:
- (i) provide Project Co with a written Notice of non-compliance;
 - (ii) provide Project Co with instructions regarding rectification or Maintenance and Rehabilitation Services, as the case may be, required to be performed by Project Co in order for Project Co to perform its obligations;
 - (iii) specify a reasonable period of time within which Project Co must perform such rectification or Maintenance and Rehabilitation Services; and
 - (iv) be entitled to exercise all rights pursuant to Section 31.
- (e) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Project Co shall:
- (i) perform any rectification or Maintenance and Rehabilitation Services, as the case may be, required by the City within a reasonable period of time specified by the City, and be

responsible for any costs incurred in performing such rectification or Maintenance and Rehabilitation Services, as the case may be; and

- (ii) pay or reimburse the City for the reasonable costs of the Performance Audit and any administrative costs incurred by the City in relation to the Performance Audit.
- (f) Nothing in this Section 30.1 shall limit or restrict the City's rights hereunder to perform any other performance audits, inspections and surveys at its own cost and expense.
- (g) The City's right to cause a Performance Audit to be undertaken may not be exercised more than once every 180 days unless any Performance Audit performed in the preceding 12 month period shows that Project Co has not performed or is not performing its obligations in any material respect.

30.2 Monitoring of Performance

- (a) Project Co shall monitor the performance of the Maintenance and Rehabilitation Services in the manner and at the frequencies set out in the Output Specifications and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations as set out in the Output Specifications and the Payment Mechanism, Project Co shall, as reasonably requested by the City, provide the City Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) The City may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.
- (c) The City may in its sole discretion and notwithstanding anything else to the contrary in this Project Agreement, share all performance monitoring information in respect of the Maintenance and Rehabilitation Period with the Operator.

30.3 Failure Points

- (a) In each Payment Period, Project Co shall measure the performance of the Maintenance and Rehabilitation Services, and based on the performance of the Maintenance and Rehabilitation Services in the applicable Payment Period, Failure Points may be awarded, as applicable, in accordance with the Payment Mechanism.

30.4 Warning Notices

- (a) Without prejudice to the City's rights under Section 43 and any other rights under this Project Agreement, if Project Co accrues the following number of Failure Points or more in any one Payment Period, then the City may give written Notice (a "**Warning Notice**") to Project Co setting out the matter or matters giving rise to such Notice and stating that it is a "Warning Notice":
 - (i) **[REDACTED]** Failure Points in respect of Train Kilometres Availability Failures; or

- (ii) [REDACTED] Failure Points in respect of Quality Failures and Service Failures combined.

30.5 Monitoring Notices

- (a) Without prejudice to the City's rights under Section 43 and any other rights under this Project Agreement, if Project Co accrues the following number of Failure Points or more in any rolling 3 Payment Periods, the City may, by Notice (a "**Monitoring Notice**") to Project Co require Project Co to increase the level of Project Co's monitoring of its own performance of its obligations under this Project Agreement until such time as Project Co shall have demonstrated to the reasonable satisfaction of the City that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant Maintenance and Rehabilitation Services:

- (i) [REDACTED] Failure Points in respect of Train Kilometres Availability Failures; or
- (ii) [REDACTED] Failure Points in respect of Quality Failures and Service Failures combined.

The City may also issue a Monitoring Notice in the event that the Capital Coverage Ratio as reported in three consecutive Contract Months is less than the Threshold Capital Coverage Ratio.

- (b) The City may give a Warning Notice pursuant to Section 30.4 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If a Monitoring Notice is given, then:
 - (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;
 - (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that the City was not entitled to give the Monitoring Notice, Project Co shall, within 5 Business Days of the receipt of the Monitoring Notice, provide Notice to the City's setting out matters objected to and any changes necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;
 - (iii) if Project Co provides the City a Notice under Section 30.5(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of the City's receipt of such Notice, may be referred for resolution in accordance with Schedule 26 - Dispute Resolution Procedure;
 - (iv) if Project Co fails to increase Project Co's monitoring as provided herein, the City may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 30.5(c)(iii);

- (v) if it is determined in accordance with Schedule 26 - Dispute Resolution Procedure that the City was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse the City for any reasonable costs and expenses incurred by or on behalf of the City in relation to the giving of such Monitoring Notice; and
- (vi) if it is determined in accordance with Schedule 26 - Dispute Resolution Procedure that the City was not entitled to give the applicable Monitoring Notice, the City shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of the City that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar Maintenance and Rehabilitation Services, as applicable, Project Co may apply for the withdrawal of such Monitoring Notice. If the City is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) If it is determined in accordance with Schedule 26 - Dispute Resolution Procedure that the City was not entitled to give any Monitoring Notice, the City shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

31. CITY'S REMEDIAL RIGHTS

31.1 Exercise of Remedial Rights

- (a) The City may exercise all rights set out in this Section 31 at any time and from time to time if:
 - (i) The City, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project 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 User or City Party;
 - (B) does or can reasonably be expected to result in a materially adverse interruption in the Maintenance and Rehabilitation Services or the availability of the System Infrastructure to System Users;
 - (C) does or can reasonably be expected to materially prejudice the performance of any Governmental Activities; or
 - (D) may potentially compromise (I) the City's reputation or integrity, or (II) the nature of the public transit system in the City of Ottawa so as to affect public confidence in the public transit system in the City of Ottawa or the Project,

provided that:

- (E) in respect of a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party, which can reasonably be expected to cause any of the consequences set out in Sections 31.1(a)(i)(A), 31.1(a)(i)(B) and 31.1(a)(i)(C), the City shall not exercise its rights under this Section 31 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of Notice from the City or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project 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 Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 31.1(a)(i)(A), 31.1(a)(i)(B) and 31.1(a)(i)(C) actually occur; and
 - (F) in respect of Section 31.1(a)(i)(D), the City shall not exercise its rights under this Section 31 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of Notice from the City or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter.
- (ii) Project Co accrues the following number of Failure Points or more in any one Payment Period:
 - (A) **[REDACTED]** Failure Points in respect of Train Kilometres Availability Failures; or
 - (B) **[REDACTED]** Failure Points in respect of Quality Failures and Service Failures combined.
 - (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the same or similar Maintenance and Rehabilitation Services.
 - (iv) pursuant to Schedule 11 – Integrated Management System Requirements, an IMS Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or Maintenance and Rehabilitation Services, as applicable, as provided in the Output Specifications.
 - (v) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations, the Governmental Activities or the availability of the System Infrastructure to System Users.
 - (vi) the City has received a notice under the Maintenance and Rehabilitation Contractor's Direct Agreement that entitles the City to exercise step-in rights thereunder.

- (vii) Project Co has failed to comply with any written direction issued by or on behalf of the City.
- (viii) Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project 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 9.6, or Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to H&S Construction Inspections in accordance with Section 13(b), or to perform its obligations to rectify any non-compliance noted in any H&S Construction Inspection Report in accordance with Section 13(e).
- (ix) Project Co has not caused the COR-Qualified Maintenance Project Co Party or the ISO 45001 Certified Maintenance and Rehabilitation Project Co Party, as the case may be, to perform its obligations with respect to its COR Certification in accordance with Section 9.6, or Project Co has not caused the COR-Qualified Maintenance Project Co Party or the ISO 45001 Certified Maintenance and Rehabilitation Project Co Party, as the case may be, to perform its obligations with respect to H&S Maintenance Inspections in accordance with Section 13(b), or to perform its obligations to rectify any non-compliance noted in any H&S Maintenance Inspection Report in accordance with Section 13(e).

31.2 Emergency

- (a) Notwithstanding that Project 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 31 at any time and from time to time during the Maintenance Period if the City, acting reasonably, considers the circumstances to constitute an Emergency.

31.3 Rectification

- (a) Without prejudice to the City's rights under Section 43 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 31.1 or 31.2, the City may, by written Notice, require Project 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 Project 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 Project Co pursuant to Section 31.3(a) and either:
 - (i) Project Co does not either confirm, within 5 Business Days of such Notice or such shorter period as is appropriate in the case of an Emergency or in the event the City is entitled to exercise step-in rights under the Maintenance and Rehabilitation Contractor's Direct Agreement 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) Project 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, including, if applicable, exercising step-in rights under the Maintenance and Rehabilitation Contractor's Direct Agreement and requiring the termination and replacement of Subcontractors, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Maintenance and Rehabilitation Services to the standards required by this Project Agreement, and the provisions of Section 40, including Section 40.1(a)(iv) and Section 40.1(a)(x), shall apply.

- (c) Notwithstanding the foregoing provisions of this Section 31.3, in the event of an Emergency, the Notice under Section 31.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and the City may, prior to Project Co's confirmation under Section 31.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where the City considers it to be necessary to do so, the steps which the City may take pursuant to this Section 31.3 subsequent to the provision of the Notice under Section 31.3(a) unless the Notice is given at a later time as provided in Section 31.3(c), may, at the City's option, include the partial or total suspension of Project Co's right and obligation to perform any Maintenance and Rehabilitation Services having regard to the circumstances in question (without any extension of the Project Term or suspension of any other Maintenance and Rehabilitation Services, and the provisions of Section 40, including Section 40.1(a)(iv) and Section 40.2, shall apply, but such suspension shall be only for so long as, as applicable:
 - (i) the circumstances referred to in Section 31.1 or 31.2 subsist; or
 - (ii) in respect of any such circumstances relating to Project Co's performance of the Maintenance and Rehabilitation Services, until such time as Project Co shall have demonstrated to the reasonable satisfaction of the City that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of Subcontractors, as are required pursuant to this Section 31.3 and as are necessary to be capable of performing its obligations in respect of the relevant Maintenance and Rehabilitation Services to the required standard in accordance with this Project Agreement, and thereafter Project Co shall perform its obligations as aforesaid.

31.4 Costs and Expenses

- (a) Subject to the City's obligations pursuant to Sections 31.5 and 31.6:
 - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of the City's rights pursuant to this Section 31; and
 - (ii) Project 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 31.

31.5 Reimbursement Events

- (a) In this Section 31.5, a “**Reimbursement Event**” means:
- (i) an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by a City Party;
 - (ii) a labour dispute involving employees of any City Party that materially affects or can reasonably be expected to materially affect the Project Operations; or
 - (iii) an Emergency that is not caused or contributed to by an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement.
- (b) If the City either takes steps itself or requires Project Co to take steps in accordance with this Section 31 as a result of a Reimbursement Event:
- (i) the City shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of the City’s rights pursuant to this Section 31 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) subject to Section 31.5(c), 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 31.
- (c) If, in exercising its rights pursuant to this Section 31, the City performs any part of the Maintenance and Rehabilitation Services either itself or by engaging others, the City shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Maintenance and Rehabilitation Services. If the City makes such a deduction, then Project Co shall be relieved of its reimbursement obligations under Section 31.4(a)(ii) up to the amount equal to the deduction.

31.6 Reimbursement if Improper Exercise of Rights

- (a) If the City exercises its rights pursuant to this Section 31, but the City was not entitled to do so, the City shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of the City issued as a result of the City having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not the City is entitled to exercise its rights pursuant to this Section 31 before taking any such action that the City may require and Project Co shall comply with all of the City’s requirements. Only concurrently with or after complying with the City’s requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.

32. PAYMENT

32.1 Construction Period Payments

- (a) The City shall pay to Project Co the Construction Period Payments, plus, for clarity, applicable HST in accordance with Schedule 20 – Construction Period Payments and this Project Agreement.
- (b) The City shall pay to Project Co the Substantial Completion Payment plus, for clarity, applicable HST, less any Lane Closure Adjustment on the Substantial Completion Payment Commencement Date in accordance with Schedule 20 – Construction Period Payments and this Project Agreement.

32.2 Monthly Service Payments

- (a) Subject to and in accordance with this Project Agreement, including this Section 32 and Schedule 19 - Payment Mechanism, the City shall pay to Project Co the Monthly Service Payments, plus, for clarity, any applicable HST.

32.3 Payment Adjustments

- (a) Project Co acknowledges and agrees that:
 - (i) the amount of any Monthly Service Payment may be adjusted pursuant to Schedule 19 - Payment Mechanism; and
 - (ii) such adjustments are integral to the provisions of this Project Agreement.
- (b) If, for any reason, any adjustment (including a Deduction) made pursuant to Schedule 19 - Payment Mechanism is invalid and unenforceable, and an Applicable Law that is a Change in Law is enacted that permits the City to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits the City to recover or to cause such adjustment to be enforceable) shall be deemed to not be a Relevant Change in Law and Project Co shall not be entitled to any compensation hereunder for such Change in Law.

32.4 Payment Commencement

- (a) Subject to and in accordance with this Project Agreement, the City shall pay Project Co the Monthly Service Payments calculated as being due to Project Co in respect of each Payment Period following the Payment Commencement Date in accordance with Schedule 19 - Payment Mechanism.
- (b) Project Co shall not be entitled to any Monthly Service Payments for any period prior to the Payment Commencement Date.

32.5 Adjustments to Payment Periods

- (a) The Annual Service Payment payable in respect of each of the first Contract Year and the last Contract Year shall be adjusted in accordance with Schedule 19 - Payment Mechanism.

32.6 Invoicing and Payment Arrangements

- (a) Within 5 Business Days following the end of each Payment Period, Project Co shall issue to the City an invoice for the amount of the Monthly Service Payment owing by the City to Project Co for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period.
- (b) Project Co shall comply with all requirements of Schedule 19 - Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as the City may reasonably require in connection with payments hereunder.
- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:
 - (i) the Monthly Service Payment payable in respect of the applicable Payment Period;
 - (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Payment Period that have been approved by the City;
 - (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 26 - Dispute Resolution Procedure;
 - (iv) any amount owing to the City under this Project Agreement;
 - (v) any amount owing to Project Co under this Project Agreement;
 - (vi) the net amount owing by the City to Project Co, or by Project Co to the City, as applicable; and
 - (vii) a statutory declaration in form and in substance satisfactory to the City with respect to CLA compliance and payment to all lien claimants:
 - (A) from Project Co, and
 - (B) upon request by the City, from any Project Co Party.
- (d) The invoices issued to the City in respect of the first Monthly Service Payment following the Payment Commencement Date (or the first invoice following expiry of the 45-day period referred to below) shall include up-to-date copies of the parcel registers for all of the Lands, which sub searches of title in support thereof shall not be performed earlier than 45 days following publication of a certificate of substantial performance of the Works pursuant to section 32(1) of the CLA.
- (e) HST shall be shown separately on all invoices from Project Co, together with Project Co's HST registration number.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.

- (g) The City Representative shall review each invoice submitted in accordance with this Section 32.6. the City shall pay the amount stated in such invoice on the first Business Day of the Payment Period next following the Payment Period in which the invoice is received. Any such payment shall be subject to adjustment pursuant to Section 32.6(k).
- (h) The City shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, the City shall not be obligated to pay an invoice delivered by Project Co after the second Payment Period following the Payment Commencement Date until Project Co has delivered the Payment Adjustment Report referred to in Section 32.6(i) for the previous Payment Period. In the event that Project Co delivers any Payment Adjustment Report later than the stipulated date in Section 32.6(i), the City's obligation to pay the invoice issued by Project Co for the immediately following Payment Period shall be extended by the number of days by which Project Co was late in delivering the applicable Payment Adjustment Report to the City.
- (i) Within 5 Business Days following the end of each Payment Period, Project Co shall also submit to the City:
 - (i) a Performance Monitoring Report in respect of the Payment Period just ended (as further described in Schedule 11 – Integrated Management System Requirements); and
 - (ii) a report (a “**Payment Adjustment Report**”) setting out any adjustments required between the actual Monthly Service Payments determined by Project Co to be owing by the City to Project Co in respect of the Payment Period just ended and the amount that was paid by the City during such Payment Period, including details of:
 - (A) all Deductions in relation to Availability Failures;
 - (B) all Deductions in relation to Quality Failures;
 - (C) all Deductions in relation to Service Failures; and
 - (D) any Gainshare Adjustment or Painshare Adjustment.
- (j) Project Co shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- (k) Within 10 Business Days of receipt by the City of the Payment Adjustment Report, the City Representative shall:
 - (i) determine and advise Project Co that the Payment Adjustment Report is approved by the City, in which case the adjustments set out therein will be reflected by Project Co in the invoice next issued by Project Co; or
 - (ii) if the City disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such Notice the City are reasonably able to quantify it) which the City dispute and submit to Project Co such supporting documentation as is reasonably required to substantiate and

confirm such claim. In such event, the City shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 32.9.

32.7 Electronic Invoicing

- (a) Project Co shall cooperate with the reasonable requirements of the City, and shall submit its invoices and all other documentation relating to this Project Agreement in a form and with the structure and content as is reasonably required to be compatible with the City's information systems.

32.8 Final Payment Periods

- (a) At the beginning of each of the final 3 Payment Periods immediately prior to the Expiry Date, the City shall estimate, acting reasonably, the adjustments to the Monthly Service Payments for each such Payment Period. The City may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final 3 Payment Periods.
- (b) Within 10 Business Days of receipt by the City of the applicable Payment Adjustment Report for each of the final 3 Payment Periods, the City Representative shall either:
 - (i) determine and advise Project Co that the Payment Adjustment Report is approved by the City and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount the City previously paid in respect of the applicable Payment Period. Based on such reconciliation, either the City or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or
 - (ii) if the City disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such Notice the City are reasonably able to quantify it) which the City disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the City Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount the City previously paid in respect of the applicable Payment Period. Based on such reconciliation, either the City or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that the City shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 32.9.

32.9 Disputes

- (a) If the City, acting in good faith, disputes all or any part of a Payment Adjustment Report and/or the Monthly Service Payments payable thereunder, it shall notify Project Co in writing of that part of the amounts (insofar as at the time of such Notice the City is reasonably able to quantify it) which the City disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute in question within 10 Business Days of the aforesaid Notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute may

be referred for resolution in accordance with Schedule 26 – Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by the City that is determined not to have been payable shall be paid forthwith by Project Co to the City, and Project Co shall indemnify and hold harmless the City from and against any damages suffered or incurred resulting from such overpayment by the City as provided for at Section 54.1(e) on the basis that the due date was the date of the overpayment by the City. Following resolution of the Dispute, any amount that has been withheld by the City that is determined to have been payable shall be paid forthwith by the City to Project Co and the City shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such withholding by the City as provided for at Section 54.2(c) on the basis that the due date was the date upon which such amount became payable to Project Co.

32.10 Payments

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice therefor.
- (b) Project Co shall maintain or cause to be maintained all holdbacks required pursuant to the CLA which may be maintained by way of cash, Letter of Credit or holdback release bond, and shall only release holdbacks on being satisfied that no claims for lien can be claimed in respect of the Subcontracts for which holdbacks are to be released.

32.11 Manner of Payment

- (a) All payments under this Project Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by the recipient from time to time by written Notice to the other Party.
- (b) If the due date is not a Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.

32.12 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 Project Co pursuant to the terms of this Project Agreement (other than any Construction Period Payment and Unpaid Construction Period Payments), any amounts (including any amounts payable in accordance with Section 54) that are due to the City by Project Co pursuant to the terms of this Project Agreement; and
 - (ii) Project Co to set off against any amounts otherwise due to the City pursuant to the terms of this Project Agreement, any amounts (including any amounts payable in accordance with Section 54) that are due to Project Co by the City pursuant to the terms of this Project Agreement.

32.13 Effect of Payment

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

32.14 Audit of Performance and Payment

- (a) Without limiting the City's rights and Project Co's obligations pursuant to Section 35.2, at any time and from time to time until 365 days after the Termination Date, the City may give Notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and payments by or to the City within the 7 year period prior to the date of such Notice, including any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.
- (b) The City shall appoint an auditor to perform and complete such audit at the City's cost and expense and pursuant to terms of reference determined by the City.
- (c) Within a reasonable time following receipt of a Notice referred to in Section 32.14(a), Project Co shall make available to the City's auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.
- (d) The City shall notify Project Co of the results of the audit, and if the City's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 26 – Dispute Resolution Procedure:
- (i) Project Co shall:
- (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Payment Adjustment Report or other record, report, information, document or data; and
- (B) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by the City, reimburse the City for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
- (I) the actual costs relating to the auditor and audit; or
- (II) an amount equal to the amount of any overpayment;
- (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by the City, Project Co shall reimburse the City for the amount of such overpayment and, further, shall indemnify and hold harmless the City from and against any damages suffered or incurred resulting from such overpayment by the City as provided for at Section 54.1(e) on the basis that the due date was the date of the overpayment by the City; and
- (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment by the City, whether or not material, the City shall pay Project Co the amount of such underpayment and, further, shall indemnify and hold harmless Project Co from and

against any damages suffered or incurred resulting from such underpayment by the City as provided for at Section 54.2(c) on the basis that the due date was the date of the underpayment by the City.

32.15 No Other Entitlement

- (a) Project 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

33. TAXES

33.1 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 Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any such HST from the City, the City shall pay such HST to Project 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 System Infrastructure and the New Municipal 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 Project Co under this Project Agreement. For greater certainty, the Parties agree that the conditions set out in paragraph 168(3)(c) of the *Excise Tax Act* (Canada) are not satisfied at the time of Substantial Completion hereunder and, unless otherwise required by Applicable Law, any HST payable by the City hereunder shall be calculated solely by reference to the amount of the payment, without any deductions or adjustments on account of paragraph 168(3)(c) of the *Excise Tax Act* (Canada).

33.2 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 Project Co in connection with the performance of the Works, the City and Project Co agree to cooperate to determine how such change affects their respective obligations under this Project Agreement to the extent not already addressed in this Project Agreement.

33.3 Changes in Recoverability of Tax Credits

- (a) The City will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to the City from time to time, as the same is incurred by Project 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 33.3, 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 Project 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 Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project 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 33.3, the term “**Recoverable Tax**” means HST incurred by Project 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 Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

33.4 Information and Assistance Provided by Project Co

- (a) Project 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. Project 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) Project 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 Project Co from time to time.

33.5 Residency – *Income Tax Act (Canada)*

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

33.6 Taxes – General

- (a) Project 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 or any the City Party to have (or result in the City or any City Party 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 Project Co or any Project Co Party under this Project Agreement or under any other Project Document.

33.7 Taxes – Indemnity

- (a) If:

- (i) Project Co becomes a Non-Resident, or
- (ii) The City or any City Party are or become 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 Project Co or a Project Co Party by the City or any City Party under this Project Agreement or under any of the Project Documents,

then the City or any City Party 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 Project Co or a Project Co Party on or after the date on which:

- (iii) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or
- (iv) the City or any City Party are 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 or any City Party under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

(b) If:

- (i) Project Co becomes a Non-Resident, or
- (ii) the City or any City Party are or become 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 Project Co or a Project Co Party by the City or any City Party under this Project Agreement or under any of the Project Documents,

Project Co shall, in each case, indemnify and hold harmless the City and the City Parties for:

- (iii) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by the City or any City Party in respect of any amounts paid or credited by the City or any City Party to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by the City or any City Party in respect of such Taxes, and
- (iv) 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 from 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 Project Co by the City shall be conclusive evidence, absent manifest error, of the amount due from Project Co to the City. The City shall be entitled to exercise its rights of set-off under Section 32.12 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 Project Co following such final determination.

34. FINANCIAL MODEL

34.1 Appointment of Custodian

- (a) On or prior to Financial Close, the Parties shall appoint a suitably qualified and experienced person to act as the custodian for the purposes of this Project Agreement, and shall enter into an agreement with the Custodian substantially in the form of Schedule 3 - Custody Agreement.

34.2 Delivery and Use of Financial Model

- (a) In accordance with Schedule 2 - Completion Documents, Project Co shall deliver copies of the Financial Model (1 printed copy and 2 copies on CD-Rom) to the City and the Custodian to be held in custody on terms to be agreed by the Parties.
- (b) Following the approval by the City of any amendment to the Financial Model, Project Co shall promptly deliver copies of the revised Financial Model, in the same form as the original Financial Model (or such other form as may be agreed by the Parties from time to time), to the City and the Custodian.
- (c) The Parties shall instruct the Custodian to keep both a hard copy and an electronic copy of all versions of the Financial Model.
- (d) Project Co hereby grants to the City an irrevocable, royalty free, perpetual, non-exclusive and transferable license, including the right to grant sub-licences, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Project Term.
- (e) For greater certainty, Project Co acknowledges and agrees that the City shall not be liable to Project Co for, and Project Co shall not seek to recover from the City or any City Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

35. RECORDS, INFORMATION AND AUDIT

35.1 Records Provisions

- (a) Project Co shall comply with Schedule 25 - Record Provisions.

35.2 Information and General Audit Rights

- (a) Project 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 25 - Record Provisions, in the possession of, or available to, Project Co as the City may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project 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 Contractors shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to the City, and shall require each Subcontractor, including the Contractors, 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 35.2(a) which subsequently come into the possession of, or become available to, Project 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 System Infrastructure and the New Municipal Infrastructure, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) Project 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 Project Operations or the System Infrastructure and the New Municipal Infrastructure, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify the City of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project 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 Project 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, Project Co, including as referred to in Schedule 25 - 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 Project Co's normal places of business unless the City and Project Co otherwise agree. The City shall also have the right to monitor and audit the performance of any and all parts of the Project Operations wherever located, and Project 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 Project Operations, including providing it 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 Project Operations. 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 Project Co under Section 35.2(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 Project Co required to be provided to or available to the City hereunder, upon reasonable Notice and at reasonable times. Project 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 Project 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, Project 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 35.2 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 35.2 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 35.2 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 35.2(a) and subject to Section 50.1(a) and 50.3, 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, Project 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. Project Co acknowledges and agrees that such information may include Sensitive Information.

35.3 Delivery of Reports to the City

- (a) During the Maintenance Period, in addition to Project Co's obligations pursuant to this Section 35, Project Co shall provide the City with a copy of all reports required pursuant to the Project Agreement including, but not limited to, the Performance Monitoring Report, the Payment Adjustment Report, the Joint Insurance Cost Report and any other reports which are required to be delivered to the City pursuant to this Project Agreement and which are requested by the City.

35.4 Lenders' Consultant Reports

- (a) Project Co shall cause the Lenders' Agent to cause, in accordance with Section 5(j) of Schedule 41 – 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.

36. CHANGES IN LAW

36.1 Performance after Change in Law

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

36.2 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 of 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 of 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 26 – Dispute Resolution Procedure; and
 - (iii) the City shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 21 - Variation Procedure shall apply except that:
 - (A) Project 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) Project Co shall be responsible for obtaining all Project Co Permits, Licences, Approvals and Authorizations 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) Project 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) Project 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 21 - Variation Procedure.

36.3 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 Project Co of performing the Project Operations 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 36.3.

- (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 of 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 of 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 26 - Dispute Resolution Procedure; and
 - (iii) the City shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 21 - Variation Procedure shall apply except that:
 - (A) Project 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) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Authorizations 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) Project 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 36.3, and any calculation of compensation shall take into consideration, *inter alia*:

- (I) any failure by a Party to comply with Section 36.3(b)(iii)(E);
 - (II) the extent to which a Party has been, or shall be, compensated in respect of such Relevant Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Project Agreement;
 - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (IV) any amount which Project 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) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 38 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 36.3, and Section 39 shall be construed accordingly.

37. VARIATIONS

37.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 21 - Variation Procedure shall apply in respect of Variations and Small Works.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 21 - Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of the City to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Maintenance and Rehabilitation Services. Furthermore, Project Co shall be entitled to request and claim for the occurrence of a Variation as otherwise provided for in this Project Agreement, including in respect of any provision requiring a determination as to the need for a Variation or whether a Variation is required.
- (c) Without limiting Project Co's obligations pursuant to Section 9.3 and Schedule 21 - Variation Procedure, Project Co shall include in each Subcontract, and shall cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations, including Variations as to scope of the Works or the Maintenance and Rehabilitation Services.

37.2 Innovation and Value Engineering

- (a) Project Co acknowledges that the City at all times desires to reduce the Monthly Service Payments and the overall cost to the City of the Works and the Maintenance and Rehabilitation

Services, and Project 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 Project Co, Project 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 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 Project Co’s reasons and justification for proposing the Innovation Proposal;
 - (iii) request the City to consult with Project 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 Project Co and the City;
 - (v) indicate, in particular, whether an increase or decrease to the Monthly Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
 - (vi) indicate if there are any dates by which a decision by the City must be made;
 - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (viii) 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) a change in the Monthly Service Payments will occur;
 - (ii) the Innovation Proposal affects the quality of the Works, the Maintenance and Rehabilitation Services, or the likelihood of successful completion of the Works or performance of the Maintenance and Rehabilitation Services;

- (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the System Infrastructure, the New Municipal Infrastructure or the performance of the City Activities;
 - (iv) the Innovation Proposal will interfere with the relationship between the City and third parties;
 - (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Maintenance and Rehabilitation Services, as applicable;
 - (vi) the residual value of the System Infrastructure or the New Municipal Infrastructure is affected;
 - (vii) the Innovation Proposal will change the Monthly Service Payment;
 - (viii) the Innovation Proposal materially affects the risks or costs to which the City is exposed; or
 - (ix) 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) Unless the City specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 37.2(h), there shall be no increase in the Monthly Service Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and the City, and the City's share of the net savings shall, as agreed by the Parties, be reflected in either a lump sum payment or in a reduction of the Monthly Service Payments.
- (k) 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 as follows:
- (i) equally by Project Co and the City for the first 5 years following the implementation of the Innovation Proposal; and

- (ii) thereafter, the City shall be entitled to the full benefit of the net savings in costs (if applicable),

and Project Co's share of the net savings shall, at the City's sole option, be reflected in either a lump sum payment or in an increase in the Monthly Service Payments.

38. DELAY EVENTS

38.1 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 Substantial Completion by the Scheduled Substantial Completion Date:
 - (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
 - (ii) any breach by the City of any of the City's obligations under this Project Agreement (including any delay by the City in giving access to the Lands pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, 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 Project Co or any Project Co Party;
 - (iii) an uncovering of the Works pursuant to Section 21.3 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 Project Co Proposal Extracts and the Design Data), unless such uncovering 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;
 - (iv) a requirement pursuant to Section 16.2(h)(i) and Section 16.2(g) for Project 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;
 - (v) a requirement pursuant to Sections 16.3(c)(ii)(A) or 16.3(d) for Project 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 and 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, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
 - (vi) a requirement pursuant to Sections 16.4(b) or 16.4(c) for Project 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;

- (vii) subject to compliance by Project Co with the provisions of Section 9.8, damage, costs or delays from the execution of Additional Works on the Lands by Additional Contractors, as applicable, in the circumstances described in Section 9.8(f), as applicable;
- (viii) a requirement pursuant to Section 13.1 of Schedule 26 - Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of the City during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;
- (ix) an event of Force Majeure;
- (x) a Relief Event;
- (xi) a Relevant Change in Law;
- (xii) [not used];
- (xiii) a requirement pursuant to Section 16.9 for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon discovery of a City Retained Latent Defect Responsibility, 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 the Project Agreement;
- (xiv) a stop work order issued by a Governmental Authority in respect of the System Infrastructure or 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 Project Co or a Project Co Party;
- (xv) changes to the terms, conditions or requirements of the Environmental Assessments (except to the extent resulting from any change by Project Co to the design of the Project or any an act, omission or fault of Project Co or a Project Co Party);
- (xvi) a Delay Event determined by the Adjudicator pursuant to Section 6.4(b) of Schedule 26 – Dispute Resolution Procedure;
- (xvii) a requirement that Project Co perform obligations under an Encumbrance pursuant to Section 15.2(c)(iii) or Section 15.2(d), which performance imposes costs or delays in the performance of Project Operations;
- (xviii) a requirement for Project 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 16.10, 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;

- (xix) a requirement for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, as a result of error in the Geotechnical Report;
 - (xx) subject to compliance with Section 9.4(g), the City's failure to issue to Project Co a final determination in respect of a Listed Project Co PLAA as set out and subject to Section 9.4;
 - (xxi) 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 Development, that third party developer,
 - (A) constructs a physical barrier that prevents Project Co from carrying out the Works or any of the Maintenance and Rehabilitation Services; or
 - (B) creates a significant physical impediment that prevents Project Co from carrying out the Works;
 - (xxii) 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 Project Co or any Project Co Party. For clarity, for the purposes of determining whether a failure of a Category 1 Utility Company described in this Section 38.1(a)(xxii) has caused a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, or a delay in achieving Final Completion by the Scheduled Final Completion Date, the Parties shall have regard to the cumulative effect of all failures by the Category 1 Utility Company in accordance with this Section 38.1(a)(xxii).
- (b) For clarity, in respect of Section 38.1(a)(xxii), 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 Project 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 38.1(a)(xxii) 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 Project Co or Project Co Parties or goods or services provided by Project Co or Project Co Parties to the Utility Companies.

38.2 Consequences of a Delay Event

- (a) Project Co shall provide written Notice to the City Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of any event or circumstances described in Sections 38.1(a)(ii), 38.1(a)(iv), 38.1(a)(v), 38.1(a)(vi), 38.1(a)(vii), 38.1(a)(xii), 38.1(a)(xiii), 38.1(a)(xiv), 38.1(a)(xv), 38.1(a)(xvi), 38.1(a)(xvii), 38.1(a)(xviii), 38.1(a)(xix), 38.1(a)(xx), 38.1(a)(xxi), or 38.1(a)(xxii) which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for relief under Section 38.2(e) as a Delay Event (a “**Notice of Pending Claim**”).
- (b) Project Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 38.2(a), provide further written details to the City Representative and the Independent Certifier which shall include:
 - (i) identification of the category of Delay Event on which Project Co’s future claim for relief would be based if such event or circumstances were to form the basis of a claim for relief as a Delay Event;
 - (ii) details of the event or circumstances forming the basis of Project Co’s notification under Section 38.2(a);
 - (iii) details of the contemporary records which Project Co shall thereafter maintain to substantiate its claim for extra time if the event or circumstances detailed in accordance with Section 38.2(b)(ii) forms the basis of a future claim by Project Co for relief as a Delay Event;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon the Scheduled Substantial Completion Date, if such event or circumstances forms the basis of a future claim by Project Co for relief as a Delay Event; and
 - (v) details of any measures that Project Co proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Project Co for relief as a Delay Event or to mitigate the consequences of such claim if such event or circumstances were to become a Delay Event.
- (c) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 38.2(a), Project 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 38.2(b), or of further particulars under Section 38.2(c), be entitled by written notice to require Project Co to provide such further supporting particulars as the City Representative may reasonably consider necessary. Project Co shall afford the City Representative and the Independent Certifier reasonable facilities for their investigations, including, without limitation, on-site inspection.
- (e) In addition to complying with its obligations under Sections 38.2(a) and 38.2(b), Project Co shall provide written notice to the City Representative and the Independent Certifier within 5 Business Days of: (A) becoming aware that an event or circumstances has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of Delay Event, or (B) becoming aware of the occurrence of an event to which Section 38.2(k) applies. Project Co shall, within 10 Business Days after such notification, provide further written details of the Delay Event or the event to which Section 38.2(k) applies to the City Representative and the Independent Certifier, including, if and as applicable, to substitute or supplement the information given in Sections 38.2(a), 38.2(b) and 38.2(c), to further substantiate or support Project Co's claim which shall include, to the extent not previously provided:
- (i) a statement of which Delay Event (or event pursuant to Section 38.2(k)) upon which the claim is based;
 - (ii) details of the circumstances from which the Delay Event (or event pursuant to Section 38.2(k)) arises;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time or pursuant to Section 38.2(k);
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date, including a Critical Path analysis of the event or circumstance indicating the impact on the Scheduled Substantial Completion Date; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event or event pursuant to Section 38.2(k).
- (f) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 38.2(e), Project Co shall submit further particulars based on such information to the City Representative and the Independent Certifier.
- (g) The City Representative shall, after receipt of written details under Section 38.2(e), or of further particulars under Section 38.2(f), be entitled by written Notice to require Project Co to provide such further supporting particulars as the City Representative may reasonably consider necessary. Project Co shall afford the City Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (h) Subject to the provisions of this Section 38, the City Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised Scheduled

Substantial Completion Date or Outside Substantial Completion Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:

- (i) the date of receipt by the City Representative of Project Co's Notice given in accordance with Section 38.2(e) and the date of receipt of any further particulars (if such are required under Section 38.2(f)), whichever is later; and
 - (ii) the date of receipt by the City Representative of any supplemental information supplied by Project Co in accordance with Section 38.2(f) and the date of receipt of any further particulars (if such are required under Section 38.2(g)), whichever is later.
- (i) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (j) If:
- (i) the City Representative declines to fix a revised Scheduled Substantial Completion Date or Outside Substantial Completion Date, as applicable;
 - (ii) Project Co considers that a different Scheduled Substantial Completion Date or Outside Substantial Completion Date, as applicable, should be fixed;
 - (iii) there is a dispute as to whether a Delay Event (or event pursuant to Section 38.2(k)) has occurred; or
 - (iv) there is a dispute as to whether Project Co is entitled to the relief set out in Section 38.2(k),

then Project 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 26 - Dispute Resolution Procedure.

- (k) Subject to Project Co meeting the obligations set out in Section 38.2 and Section 38.3, if,
- (i) a Lane Closure is directly caused or extended by one or more of the events set out in Section 38.1(a), whether or not such event constitutes a Delay Event, such Lane Closure or extension thereof shall not be included in the Aggregate Actual Lane Closures or the Aggregate Actual 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 7 – Mobility Matters;
 - (ii) a Construction Period Quality Failure,
 - (A) has been assessed in accordance with Schedule 20 – Construction Period Payments; and
 - (B) has arisen from a Non-Conformance that has been directly caused by one or more of the events set out in Section 38.1(a), whether or not such event constitutes a Delay Event,

such Construction Period Quality Failure shall not be applied as part of the Construction Period Deduction for the relevant Payment Period in accordance with Section 6 of Schedule 20 – Construction Period Payments.

- (iii) For clarity, Section 38.2(k)(i) shall apply only to the extent that a Lane Closure was not contemplated by the Aggregate Target Lane Closures and not merely because a Lane Closure has been deferred.
- (l) To the extent Project Co does not comply with its obligations under Sections 38.2(a), 38.2(b), 38.2(c), 38.2(d), 38.2(e), 38.2(f) or 38.2(g), subject to Section 38.2(m) such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 38.
- (m) If Project Co does not provide further written details to the City and the Independent Certifier as required under Section 38.2(b) within the 10 Business Day period referred to in such Section, Project Co acknowledges and agrees that, after a further 10 Business Days, Project Co shall not be entitled to rely upon, and the City shall not be obligated to consider, the notice given under Section 38.2(a) for the purposes of determining Project Co's entitlement to relief under this Section 38. Project Co, at its option, may submit a new, currently dated notice which complies with the provisions of Section 38.2(a) for the same event or circumstance which gave rise to the previous, unsubstantiated notice, and the provisions of this Section 38 shall apply to such new notice, *mutatis mutandis*. Project Co acknowledges and agrees that the City, in determining Project Co's entitlement to an extension of time pursuant to this Section 38 and without limiting any other right of the City under this Project Agreement, shall be entitled to take into account the delay between:
 - (i) Project Co becoming aware of the occurrence of the event or circumstance forming the basis of the original notice delivered pursuant to Section 38.2(a), and
 - (ii) Project Co submitting the new notice pursuant to Section 38.2(a) in respect of that event or occurrence.

38.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Delay Event or an event pursuant to Section 38.2(k), Project Co shall, and shall require all Project 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 or event pursuant to Section 38.2(k); and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event (or event pursuant to Section 38.2(k)) as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 38.3, such failure shall be taken into account in determining,

- (i) Project Co's entitlement to an extension of time pursuant to this Section 38; and
- (ii) Project Co's entitlement to the relief contemplated in Section 38.2(k).

39. COMPENSATION EVENTS

39.1 Definition

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 38.1(a)(ii), 38.1(a)(iii), 38.1(a)(iv), 38.1(a)(v), 38.1(a)(vi), 38.1(a)(vii), 38.1(a)(viii), 38.1(a)(xii), 38.1(a)(xiii), 38.1(a)(xiv), 38.1(a)(xv), 38.1(a)(xvi), 38.1(a)(xvii), 38.1(a)(xviii), 38.1(a)(xix), 38.1(a)(xxi) and 38.1(a)(xxi) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay and the procedure described in Section 38.2 shall apply, *mutatis mutandis*, to such events as Compensation Events (including, for certainty, Section 38.2(l)).

39.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 39. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
 - (i) Schedule 21 - Variation Procedure, in the case of a Delay Event referred to in Section 38.1(a)(i);
 - (ii) Section 42, in the case of a Delay Event referred to in Section 38.1(a)(ix);
 - (iii) Section 41, in the case of a Delay Event referred to in Section 38.1(a)(x); and
 - (iv) Section 36.3, in the case of a Delay Event referred to in Section 38.1(a)(xi).
- (b) Subject to Sections 39.3 and 39.4, if it is agreed, or determined in accordance with Schedule 26 - Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project 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 Project Co. Project 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 Project Co pursuant to this Section 39.2, 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 Project Co, acting reasonably, or, alternatively, the City may request Project Co to agree to an adjustment to the Monthly Service Payments. If Project Co agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 21 - Variation Procedure shall apply.
- (d) To the extent that Project Co does not comply with its obligations under Sections 38.2(a), 38.2(b), 38.2(c), 38.2(d), 38.2(e), 38.2(f), 38.2(g) or 38.2(m), and subject to Section 38.2(m), such failure

shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 39.

39.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 39 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 39.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 39.

39.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 39 shall be reduced by any amount which Project Co or a Project 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.

39.5 Delivery of PBS-2

- (a) If an event referred to in Sections 38.1(a)(iii), 38.1(a)(iv), 38.1(a)(v), 38.1(a)(vi), 38.1(a)(vii), 38.1(a)(viii) or 38.1(a)(xv) occurs after the date that is 150 days following Financial Close as such date may be extended in accordance with Section 38.2(h) and prior to the City assigning the comment "NO COMMENT" or "MINOR COMMENT" to PBS-2 in accordance with Schedule 12 – Works Scheduling Requirements, Project Co shall not be entitled to receive any compensation under this Section 39 in respect of such Compensation Event unless such Compensation Event is also a Delay Event, in which case Project 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 39.5, Project Co would have been entitled to pursuant to Section 39.2(b).

39.6 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 39.3 and 39.4 shall apply to the compensation set out in this Section 39.6 notwithstanding that the Delay Event referred to in Section 38.1(a)(xxii) is not a Compensation Event;

- (b) If it is agreed, or determined in accordance with Schedule 26 - Dispute Resolution Procedure, that there has been a Delay Event referred to in Section 38.1(a)(xxii), Project Co shall be entitled to the following:
- (i) an amount calculated in accordance with the following:
- (A) For the purpose of this Section 39.6(b)(i), “**Non-Debt Compensation Amount**” means an amount that would place Project Co in no better and no worse position than it would have been in had the applicable Delay Event referred to in Section 38.1(a)(xxii) 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 Project 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 Project 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 Project 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 Project 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 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.

40. EXCUSING CAUSES

40.1 Definition

- (a) For the purposes of this Project Agreement, “**Excusing Cause**” means any of the following events or circumstances if it occurs after the Substantial Completion Date and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Maintenance and Rehabilitation Services:
 - (i) the implementation of a Variation to the extent Project Co has identified any impact on the Maintenance and Rehabilitation Services in its Estimate and such impact has been documented in the Variation Confirmation;
 - (ii) any breach by the City of any of the City’s obligations under this Project Agreement (including any obstruction of the rights afforded to Project Co under Section 14.1), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) any deliberate or negligent act or omission of any City Party or any failure by any City Party (having regard to the interactive nature of the activities of the City and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co’s performance of the Maintenance and Rehabilitation Services, except to the extent:
 - (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
 - (B) any City Party is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
 - (C) any such act, omission or failure was contemplated in Schedule 15 - Output Specifications or was otherwise provided for in this Project Agreement; or

- (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co's obligations under this Project Agreement;
- (iv) the implementation of any action taken by the City, or any suspension of Project Co's obligation to deliver all or any part of the Maintenance and Rehabilitation Services, or the compliance by Project Co with instructions given by the City, in each case in the circumstances referred to in Section 31;
- (v) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between the City and Project Co;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of any City Party, except to the extent that any such labour-related action is caused, or contributed to, by Project Co or any Project Co Party;
- (vii) the occurrence of any Contamination for which the City is responsible pursuant to Section 16.2;
- (viii) the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites for which the City is responsible pursuant to Section 16.3;
- (ix) the discovery of any Species-at-Risk for which the City is responsible pursuant to Section 16.4;
- (x) a derailment, collision, or any other accident involving the exterior of a Revenue Vehicle, including at intersections, except to the extent that any such derailment, collision, or other accident is caused, or contributed to, by Project Co or any Project Co Party;
- (xi) a derailment, collision, or any other accident involving both an element of Fixed Infrastructure (as defined in Schedule 15-1 – Technical Terms and Reference Documents) and a road vehicle except to the extent that any such collision is caused, or contributed to, by Project Co or any Project Co Party;
- (xii) 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 Project Operations or during the Maintenance Period in general, provided, however, that a civil disobedience or protest action shall not, in any event, be an Excusing Cause unless Project Co has fully complied with Section 9.7;
- (xiii) the operation of additional rail vehicles on the System by third parties unrelated to: (i) Project Co's performance of the Project Operations; (ii) a breach by Project Co of its other obligations under this Project Agreement; (iii) an act or omission of Project Co or any Project Co Party; or (iv) any other matter within Project Co's control.

40.2 Consequences of an Excusing Cause

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 40.3 and 40.4):
- (i) any failure by Project Co to perform, and any poor performance of, any affected Maintenance and Rehabilitation Services shall not constitute a breach of this Project Agreement by Project Co, no Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such Maintenance and Rehabilitation Services for the duration and to the extent prevented by such Excusing Cause;
 - (ii) any interference shall be taken into account in measuring the performance of any affected Maintenance and Rehabilitation Services in accordance with the Performance Monitoring Program, which shall be operated as though the relevant Maintenance and Rehabilitation Services had been performed free from such adverse interference;
 - (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Availability Failure, Quality Failure or Service Failure resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Project Agreement as if there had been no such interference with the Maintenance and Rehabilitation Services, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation under Section 39 or otherwise in accordance with this Project Agreement and for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;
 - (iv) this Section 40.2 shall not limit the City's entitlement to reimbursement pursuant to Section 31.4;

the City shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 40.1(a)(ii), 40.1(a)(iii), 40.1(a)(vi), 40.1(a)(vii), 40.1(a)(viii), 40.1(a)(ix), 40.1(a)(xii) or 40.1(a)(xiii), including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 21 - Variation Procedure; and
 - (v) the Monthly Service Payments payable by the City shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Maintenance and Rehabilitation Services, as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 21 - Variation Procedure.

40.3 Mitigation

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project 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 Excusing Cause; and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 40.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 40.

40.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 40 shall be reduced by any amount which Project Co or a Project 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.

41. RELIEF EVENTS

41.1 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, 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 enter into a Utility Agreement, 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 Project 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 41.1(a)(ii) shall apply only in circumstances where the Utility Company is providing services to Project Co of the type provided by the Utility Company in the normal course of its business. For further clarity, Section 41.1(a)(ii) shall not apply in circumstances where Project Co has entered into a Utility 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 System Infrastructure or any roads servicing the Lands;
- (iv) without prejudice to any obligation of Project 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 System Infrastructure or the New Municipal Infrastructure or the construction or facility maintenance 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 Project Operations 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 Project Co has fully complied with Section 9.7.

41.2 Consequences of a Relief Event

- (a) Subject to Section 41.3:
 - (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 45.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement; and
 - (ii) as soon as the events or circumstances constituting a Relief Event have ceased any Failure Points accrued in respect of any failure by Project Co to perform any of its obligations under this Project Agreement shall be cancelled and any related Warning Notices and Monitoring Notices shall be withdrawn,

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). For greater certainty, the City shall be entitled to make Deductions in accordance with Schedule 19 - Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 41.2(a)(ii).

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 38.1(a)(x):

- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 38; and
 - (ii) in respect of a Relief Event occurring prior to the Substantial Completion Date affected by that Delay Event and referred to in Section 41.1(a)(ii) (but only in respect of failure by a Utility Company to perform works or provide services), 41.1(a)(v), 41.1(a)(vi) or 41.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the City Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum (and as a part thereof) in accordance with Schedule 22 - Compensation on Termination, the City shall pay to Project 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 Project Co or any Project Co Party to the Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the City Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum, as applicable, together with interest thereon at the rate payable on the Debt Amount, which, but for the Delay Event, would not have been paid by Project Co to the Lenders.
- (c) If a Relief Event occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 41.2(b)(ii) and 47.
 - (d) During a Relief Event which occurs on or after the Substantial Completion Date, the provisions of Schedule 19 - Payment Mechanism will continue to be in full force and effect, subject to Section 41.2(a).
 - (e) Subject to Section 47, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 41.
 - (f) In respect of a Relief Event that,
 - (i) occurs prior to the Initial Capital Investment Date; and
 - (ii) causes a delay to Project Co in performing the Works,

the City shall pay to Project Co, on the first Construction Period Payment date after the Initial Capital Investment Date is achieved, an amount equal to the Debt Service Amount accrued and paid, or which became payable, by Project Co or any Project Co Party to the Lenders, in accordance with the Lending Agreements, during the period of delay, up to and including the first Construction Period Payment date, together with interest thereon at the rate payable on the Debt Amount, which, but for the delay caused by the Relief Event would not have been paid by Project Co to the Lenders.

41.3 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 41.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 41.
- (c) The Party claiming relief shall give written Notice to the other Party within 5 Business Days of 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 the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 41.3(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 41.3(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.

41.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project 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.

42. FORCE MAJEURE

42.1 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 System Infrastructure and/or the Lands, unless Project Co or any Project Co Party is the source or cause of the contamination;

- (iii) chemical or biological contamination of the Works, the System Infrastructure and/or the Lands from any event referred to in Section 42.1(a)(i);
- (iv) pressure waves caused by devices traveling at supersonic speeds; or
- (v) the discovery of any Species-at-Risk, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

42.2 Consequences of Force Majeure

- (a) Subject to Section 42.3, 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 38.1(a)(ix):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 38; and
 - (ii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the City Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum (and as a part thereof) in accordance with Schedule 22 - Compensation on Termination, the City shall pay to Project Co an amount equal to the Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the City Default Termination Sum, Non-Default Termination Sum or Breach of Refinancing Termination Sum, as applicable, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would not have been paid by Project Co to the Lenders.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 42.2(b)(ii) and 47.
- (d) During an event of Force Majeure which occurs on or after the Substantial Completion Date, the provisions of Schedule 19 - Payment Mechanism will be suspended, and the City shall pay to Project Co, for each Payment Period, an amount which reflects the cost to Project Co of the Maintenance and Rehabilitation Services performed, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 42.2(d) shall never be more than the Maximum Service Payment.
- (e) Subject to the provisions of this Section 42, and with respect to an event of Force Majeure that is not a Delay Event and that arises prior to the Substantial Completion Date,
 - (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 7 – Mobility Matters;

- (ii) a Construction Period Quality Failure that,
 - (A) has been assessed in accordance with Schedule 20 – Construction Period Payments; and
 - (B) has arisen from a Non-Conformance that has been directly caused by an event of Force Majeure,

shall not be applied as part of the Construction Period Deduction for the relevant Payment Period in accordance with Section 6 of Schedule 20 – Construction Period Payments.

- (f) Subject to Section 47, Project 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 42.
- (g) In respect of an event of Force Majeure that,
 - (i) occurs prior to the Initial Capital Investment Date; and
 - (ii) causes a delay to Project Co in performing the Works,

the City shall pay to Project Co, on the first Construction Period Payment date after the Initial Capital Investment Date is achieved, an amount equal the Debt Service Amount accrued and paid, or which became payable, by Project Co or any Project Co Party to the Lenders, in accordance with the Lending Agreements, during the period of the delay, up to and including the first Construction Period Payment date, together with interest thereon at the rate payable on the Debt Amount, which, but for the delay caused by the event of Force Majeure would not have been paid by Project Co to the Lenders.

42.3 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.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 42.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 42.
- (c) The Party claiming relief shall give written Notice to the other Party within 5 Business Days of 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 the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 42.3(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 42.3(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.

42.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 42 shall be reduced by any amount which Project Co or a Project 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.

42.5 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 26 - Dispute Resolution Procedure shall not apply to a failure of the City and Project Co to reach agreement pursuant to this Section 42.5.

43. PROJECT CO DEFAULT

43.1 Project Co Events of Default

- (a) Subject to Section 43.1(b), for the purposes of this Project Agreement, “**Project 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) Project 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 Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co

- or any of Project Co's assets, or any proceedings are instituted against Project Co that result in Project 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 Project Co seeking any such result, or any such proceedings are instituted by a person other than Project 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 Governmental Activities or the availability of the System Infrastructure to System Users (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of 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 Project Co are taken to authorize any of the actions set forth in this Section 43.1(a)(i)(A);
- (B) Project 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 Project 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 Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
 - (D) Project 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 43.1(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 43.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
 - (iii) Project Co either:
 - (A) failing to deliver a Recovery Schedule in accordance with Schedule 12 – Works Scheduling Requirements;
 - (B) delivering a Recovery Schedule under Schedule 12 – Works Scheduling Requirements which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or

- (C) delivering a Recovery Schedule under 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;
- (iv) Project 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 Project Operations, the Governmental Activities or the availability of the System Infrastructure to System Users, 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 so as to affect public confidence in the public transit system in the City of Ottawa 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 of receipt of Notice of the same from the City;
- (v) Project Co committing a breach of Section 50 or Section 51 or a breach of its obligations under this Project Agreement (other than a breach that is referred to in Sections 43.1(a)(i) to (iv) inclusive or 43.1(a)(vi) to (xx) inclusive) which has or will have a material adverse effect on the Governmental Activities or the availability of the System Infrastructure to System Users, other than where such breach is a consequence of a breach by the City of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
 - (A) Project Co shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on the City and the Governmental Activities or the availability of the System Infrastructure to System Users;
 - (II) put forward, within 5 Business Days of 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 of 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; and
 - (B) upon Project Co failing to comply with any of the provisions of Section 43.1(a)(v)(A):

- (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on the City and the Governmental Activities or the availability of the System Infrastructure to System Users;
 - (II) Project Co shall, within 3 Business Days after Notice from the City, submit a plan and schedule, which the City shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to the City, in its sole discretion, and 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; and
 - (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 43.1(a)(v)(B), or the City, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to Section 43.1(a)(v)(B)(II), shall constitute a Project Co Event of Default;
- (vi) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project 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;
 - (vii) Project Co ceasing to perform any Maintenance and Rehabilitation Services in accordance with this Project Agreement which is necessary for the Governmental Activities or the availability of the System Infrastructure to System Users, other than as a consequence of a breach by the City of its obligations under this Project Agreement;
 - (viii) Project Co failing to comply with Sections 57.1 or 57.3;
 - (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 57.4;
 - (x) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 3 Payment Periods;
 - (xi) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 6 Payment Periods;
 - (xii) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 12 Payment Periods;
 - (xiii) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than any Encumbrance derived through the City) within 45 days of the earlier of:
 - (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
 - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;

- (xiv) Project 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 Project Co in accordance with Schedule 26 - Dispute Resolution Procedure or have not been set off by Project Co pursuant to Section 32.12(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 Project Co of a Notice of non-payment from the City;
- (xv) Project Co failing to comply with Section 58;
- (xvi) Project Co failing to comply with Section 7.3 or Schedule 27 - Refinancing;
- (xvii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project 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 as a consequence of a breach by the City of its obligations under this Project Agreement, and:
 - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xviii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 26 - Dispute Resolution Procedure;
- (xix) at any time after the Substantial Completion Date, Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by the City of its obligations under this Project Agreement) which results in a health and safety related criminal conviction or a conviction under the *Occupational Health and Safety Act* (Ontario) against Project Co or any Project Co Party or the City (an “**H&S Conviction**”) provided however that:
 - (A) an H&S Conviction against Project Co, a Project Co Party or the City shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 57.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to the City, in its sole discretion; and
 - (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 43.1(a)(xix), the City shall:

- (I) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and
 - (II) give all due consideration, where appropriate, to action other than termination of this Project Agreement; or
- (xx) Project Co failing to comply with Section 27.4 and 27.8.
- (b) The City shall not exercise any rights under this Section 43 (except its rights under Section 43.5(a)(i)) as a result of a Project Co Event of Default referred to in Sections 43.1(a)(vii), 43.1(a)(x), 43.1(a)(xi) and 43.1(a)(xii) until the day following the Substantial Completion Payment Commencement Date. For greater certainty, if the City is prevented from exercising any rights under this Section 43 by the terms of the immediately preceding sentence, then, notwithstanding the passage of time or any intervening event (including that the City may have exercised its rights under Section 43.5(a)), on and after the day following the Substantial Completion Payment Commencement Date, the City may exercise any such rights.

43.2 Notification of Occurrence

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify the City of the occurrence, and details, of any Project 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 Project Co Event of Default.

43.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after the City becomes aware of a Project Co Event of Default (and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 26 - Dispute Resolution Procedure that a Project Co Event of Default has occurred), the City may, subject to Section 43.4, terminate this Project Agreement in its entirety by written Notice having immediate effect given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice.

43.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 43.1(a)(i)(B), 43.1(a)(i)(C), 43.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 43.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 43.1(a)(i)(B) or 43.1(a)(i)(C)), 43.1(a)(iii), 43.1(a)(iv), 43.1(a)(vi), 43.1(a)(vii), 43.1(a)(viii), 43.1(a)(ix) (where the Project Co Event of Default referred to in Section 43.1(a)(ix) is capable of being remedied), 43.1(a)(xiv), 43.1(a)(xvi), 43.1(a)(xvii) (where the Project Co Event of Default referred to in Section 43.1(a)(xvii) is not in respect of insurance), 43.1(a)(xviii), 43.1(a)(xix) or 43.1(a)(xx), the City shall, prior to being entitled to terminate this Project Agreement, give Notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice, and Project Co shall:

- (i) within 5 Business Days of such Notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of 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 Project Co puts forward a plan and schedule in accordance with Section 43.4(a)(i) that has a date for the Project 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 Project 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 Project Co Event of Default, of which a Notice of default was given under Section 43.4(a), occurs and:
 - (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on the City and the Governmental Activities or the availability of the System Infrastructure to System Users; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 43.4(a)(i); or
 - (iii) such Project Co Event of Default is not remedied within 30 days of such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 43.4(a) and (b); or
 - (iv) where Project Co puts forward a plan and schedule pursuant to Section 43.4(a)(i) and Project 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 Project 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 43.4(a), and without prejudice to the other rights of the City in this Section 43.4, at any time during which a Project Co Event of Default is continuing, the City may, at Project Co's risk and expense, take such steps as the City considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.

- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 43.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and the City shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

43.5 Replacement of Non-Performing Maintenance and Rehabilitation Contractor

- (a) The City may, acting reasonably, require Project Co to terminate the Maintenance and Rehabilitation Contractor and ensure that a replacement Maintenance and Rehabilitation Contractor is appointed in accordance with Section 57.3 to provide the Maintenance and Rehabilitation Services within 60 days:
- (i) as an alternative to termination of this Project Agreement pursuant to Sections 43.3 or 43.4, in any circumstance in which the City could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Maintenance and Rehabilitation Contractor or otherwise relates to the Maintenance and Rehabilitation Services; or
 - (ii) if Project Co accrues, in any rolling 6 Payment Periods more than:
 - (A) **[REDACTED]** Failure Points in respect of Train Kilometres Availability Failures; or
 - (B) **[REDACTED]** Failure Points in respect of Quality Failures and Service Failures combined,provided that this Section 43.5 shall not give rise to partial termination of either the obligation to provide the Project Operations or this Project Agreement.
- (b) If the City exercises its rights under this Section 43.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or performance of the Maintenance and Rehabilitation Services until such time as a replacement Maintenance and Rehabilitation Contractor can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate performance of the Maintenance and Rehabilitation Services and the Parties cannot agree within a further 3 Business Days to a plan for the interim management or performance of the Maintenance and Rehabilitation Services, then, without prejudice to the other rights of the City in this Section 43.5, the City itself may perform, or engage others (including a third party) to perform, the Maintenance and Rehabilitation Services and Section 31.4 shall apply, *mutatis mutandis*, to the Maintenance and Rehabilitation Services. Any Dispute in respect of the interim management or provision of the Maintenance and Rehabilitation Services may be referred for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.
- (c) If Project Co fails to terminate, or secure the termination of, the Maintenance and Rehabilitation Contractor and to secure a replacement Maintenance and Rehabilitation Contractor in accordance with this Section 43.5, the City shall be entitled to exercise its termination rights in accordance with Sections 43.3 and 43.4, as applicable.

- (d) Where a replacement Maintenance and Rehabilitation Contractor is appointed in accordance with this Section 43.5, [REDACTED]% of the Failure Points accrued by Project Co prior to such replacement shall be cancelled.

43.6 Replacement of Non-Performing Revenue Vehicle Supplier

- (a) The City may, acting reasonably, require Project Co to terminate the Revenue Vehicle Supplier as an alternative to termination of this Project Agreement pursuant to Sections 43.3 or 43.4, in any circumstance in which the City could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Revenue Vehicle Supplier. In the event the City does not exercise its rights and if the Project Co Event of Default was caused by the Revenue Vehicle Supplier, Project Co may, acting reasonably, with the consent of the City, terminate the Revenue Vehicle Supplier as an alternative to termination of this Project Agreement pursuant to Sections 43.3 or 43.4.
- (b) If Project Co fails to terminate, the City shall be entitled to exercise its termination rights in accordance with Sections 43.3 and 43.4, as applicable.
- (c) If the City or Project Co exercises its right under this Section 43.6, then:
- (i) the subject Project Co Event of Default that was caused, or contributed to, by the Revenue Vehicle Supplier shall be deemed to be cured and there shall no longer be a Project Co Event of Default in respect of such event or events;
 - (ii) Project Co and the City shall work together in good faith and use reasonably commercial efforts to attempt to secure an appropriate replacement Revenue Vehicle Supplier to supply the New Revenue Vehicles and to mitigate the impact of such replacement Revenue Vehicle Supplier on the Works Schedule and the performance of the Project Operations;
 - (iii) if such right is exercised by the City prior to the date which is one year prior to the Scheduled Substantial Completion Date, Project Co shall only be required to achieve Interim Substantial Completion on or prior to the Scheduled Substantial Completion Date and all references herein to Substantial Completion and Scheduled Substantial Completion shall be automatically amended and read as references to Interim Substantial Completion and Scheduled Interim Substantial Completion, respectively, such that all other requirements that would have been required to be performed in connection with Substantial Completion shall be performed in connection with Interim Substantial Completion; and
 - (iv) to the extent the City provides any replacement vehicles to replace any New Revenue Vehicles that were not delivered by the Revenue Vehicle Supplier or that were delivered after the original Revenue Vehicle Supplier was terminated, and as a result thereof Project Co incurs any delays or increased costs in the performance of the Project Operations, such performance shall, subject to and in accordance with Schedule 21 – Variation Procedure, result in a Variation.

43.7 City's Costs

- (a) Project 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 43, including any relevant increased administrative expenses. The City shall take commercially reasonable steps to mitigate such costs.

43.8 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 43 and 45.

43.9 Project Co Termination of Revenue Vehicle Supplier

- (a) Project Co shall not exercise any right to terminate the Revenue Vehicle Supply Contract without the consent of the City.

44. CITY DEFAULT

44.1 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 Project Co under this Project Agreement, which sum or sums are not being disputed by the City in accordance with Schedule 26 - Dispute Resolution Procedure or have not been set off by the City pursuant to Section 32.12(a)(ii), and which sum or sums, either singly or in aggregate, exceed(s) **[\$REDACTED]** (index linked), and:
 - (A) in respect of a Construction Period Payment or the Substantial Completion Payment, such failure continues for 30 Business Days;
 - (B) subject to Section 44.1(a)(i)(C), in respect of any Monthly Service Payment, such failure continues for 30 days;
 - (C) in respect of any 3 Monthly Service Payments in any rolling 9 month period, such failure continues for 15 Business Days in respect of each such Monthly Service Payment; or
 - (D) in respect of any other payment due and payable by the City to Project Co under this Project Agreement, such failure continues for 90 days,in any such case, from receipt by the City of a Notice of non-payment from or on behalf of Project Co;
 - (ii) the City committing a material breach of its obligations under Section 14 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement),

which breach materially adversely affects the ability of Project 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 Project Co to perform all or substantially all of its obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days (for greater certainty, the non- issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences, Approvals and Authorizations shall not constitute an “act of any Governmental Authority”).

44.2 Project Co’s Options

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

44.3 Project Co’s Costs

- (a) The City shall reimburse Project 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 Project Co in exercising its rights under this Section 44, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

44.4 No Other Rights to Terminate

- (a) Project 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.

45. RELIEF EVENT AND NON-DEFAULT TERMINATION

45.1 Termination for Relief Event

- (a) Subject to Section 45.1(b), 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 41.3(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.

- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 45.1(a) if Project Co or a Project 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, an amount which is equal to or greater than the Monthly Service Payment.

45.2 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 42.5 within 180 days from 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.

45.3 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 Project Co.
- (b) In the event of Notice being given by the City in accordance with this Section 45.3, the City shall, at any time before the expiration of such Notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the Maintenance and Rehabilitation Services, or any element of the Maintenance and Rehabilitation Services, where such Works or Maintenance and Rehabilitation Services have not yet been commenced.

45.4 Automatic Expiry on Expiry Date

- (a) This Project Agreement shall terminate automatically on the Expiry Date.
- (b) Project 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.

46. EFFECT OF TERMINATION AND TRANSITIONAL ARRANGEMENTS

46.1 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 45.4, this Section 46 shall apply in respect of such termination.

46.2 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.

46.3 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 Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 22 - 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 46.

46.4 Effect of Notice of Termination

- (a) On the service of a Notice of termination, or termination on the Expiry Date pursuant to Section 45.4:
- (i) if termination is prior to the Substantial Completion Date, 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 53.1, Project 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 System Infrastructure and the New Municipal Infrastructure as shall have been constructed and such items of plant, infrastructure and equipment as shall have been procured by Project Co, and, if the City so elects:
 - (A) all plant, equipment and materials (other than those referred to in Section 46.4(a)(i)(B)) on or near to the Site 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 the Substantial Completion Date, Project 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 System Infrastructure and the New Municipal Infrastructure;
 - (iii) in so far as title shall not have already passed to the City pursuant to Section 53.1 or Section 46.4(a)(i), Project 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 System Infrastructure and the New Municipal Infrastructure, together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment including, notwithstanding that termination may occur prior to the Expiry Date, the verification and transfer of inventory as set forth in Appendix C (Expiry Date Requirements) of the Maintenance and Rehabilitation Requirements, and to the extent that any such assets or rights are not capable of being transferred by Project Co to the City, Project 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 it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;

- (iv) if the City so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Construction Contract and the Maintenance and Rehabilitation Contract), and any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to the City or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with any Contractor shall be made to the City pursuant to, and subject to, the terms of the applicable Direct Agreement;
- (v) Project Co shall, or shall ensure that any Project 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 26 - 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 Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the System Infrastructure, and reasonably required by the City in connection with the operation of the System Infrastructure or the performance of the Maintenance and Rehabilitation Services;
- (vi) Project Co shall deliver to the City (to the extent such items have not already been delivered to the City) one complete set of:
 - (A) the most recent Record Drawings in the format that the City, acting reasonably, considers most appropriate at the time showing all alterations made to the System Infrastructure since the Substantial Completion Date;
 - (B) the most recent maintenance, operation and training manuals for the System Infrastructure; and
 - (C) current regulations and standards governing the System Infrastructure.
- (vii) Project 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 Project Co under this Project Agreement and included in the System Infrastructure and the New Municipal Infrastructure;

- (viii) Project Co shall deliver to the City all information, reports, documents, records and the like referred to in Section 35, including as referred to in Schedule 25 - Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to the City);
- (ix) in the case of the termination of this Project Agreement on the Expiry Date in accordance with Section 45.4, the System Infrastructure and elements of the System Infrastructure shall be in the condition required in accordance with Section 48 and Schedule 23 - Expiry Transition Procedure; and
- (x) in the case of termination prior to the Expiry Date, Project Co shall implement the requirements set out in Sections 2.2, 2.3(a)(ii) and 2.5 to 2.9 of Appendix C to Schedule 15-3 of this Project Agreement, taking into account the circumstances of termination occurring prior to the Expiry Date, and meet any timeframes set out in the notice of termination for the implementation of such requirements.

46.5 Ownership of Information

- (a) Subject to Section 49, all information obtained by Project Co, including the Record Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, lease, license and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Operations 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.

46.6 Provision in Subcontracts

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that the City shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 46.

46.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued performance of Maintenance and Rehabilitation Services pursuant to Sections 3.2 and 3.3 of Schedule 22 - Compensation on Termination if applicable:

- (i) cooperate fully with the City and any successors providing services in the nature of any of the Maintenance and Rehabilitation Services and any part of the Maintenance and Rehabilitation Services in order to achieve a smooth transfer of the manner in which the Maintenance and Rehabilitation Services is performed and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of any System Users;
 - (ii) as soon as practicable remove from the Lands all property belonging to Project Co or any Project Co Party that is not acquired by the City pursuant to Section 46.4 or otherwise, and, if Project 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 Project Co;
 - (iii) 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 System Infrastructure; and
 - (B) to the extent transferable and without prejudice to the City's rights pursuant to Section 49, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the System Infrastructure;
 - (iv) as soon as practicable vacate the Lands and, without limiting Project Co's obligations under Schedule 23 - Expiry Transition Procedure, shall leave the Lands and the System Infrastructure in a safe, clean and orderly condition.
- (b) If the City wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to the Maintenance and Rehabilitation Services or any part of the Maintenance and Rehabilitation Services, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with the City fully in such competition process, including by:
- (i) providing any information which the City may reasonably require to conduct such competition, including all information contained in any asset management system maintained by Project Co not otherwise transferred to the City, other than Sensitive Information; and
 - (ii) assisting the City by allowing any or all participants in such competition process unrestricted access to the Lands and the System Infrastructure.

46.8 Cessation of Rights and Obligations on Termination

- (a) On completion of Project Co's obligations pursuant to this Section 46, this Project Agreement shall terminate and, except as provided in Section 46.9, all rights and obligations of the City and Project Co under this Project Agreement shall cease and be of no further force and effect.

46.9 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, 5, 7, 15.2, 16.1, 16.3(a), 16.4(a), 16.5(a), 24.6, 25.11, 25.14, 30.1, 30.5, 31, 32.6, 32.8, 32.12, 32.13, 32.14, 33, 34, 35, 43.6, 44.3, 45.4, 46, 47, 48, 49 with the exception of 49.4(b), 50, 51, 53, 54, 55, 56, 58.3, 59.1, 62.4, 62.8, 62.9, 62.10, 62.11 and 62.12 of this Project Agreement, Schedule 7 – Mobility Matters, Schedule 22 - Compensation on Termination, Sections 2, 4 and 5 of Schedule 23 - Expiry Transition Procedure, Sections 1.2 to 1.8 of Schedule 25 - Record Provisions, Schedule 26 - Dispute Resolution Procedure, Sections 2.1 – 2.7, and 3.2-3.9 of Schedule 35 – Intellectual Property, Schedule 36 – System Extension and any other provisions of this Project Agreement which are expressed to survive termination and 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 45.4.

47. COMPENSATION ON TERMINATION

47.1 Compensation on Termination

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 22 - Compensation on Termination shall apply and the City shall pay Project Co any applicable compensation on termination.

47.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 47.2(b), any compensation paid pursuant to this Section 47, including pursuant to Schedule 22 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project 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 Project 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 47.2(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 32.12 or taken into account pursuant to Schedule 22 - Compensation on Termination in determining or agreeing upon the City Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum or any other termination sum, as the case may be;

- (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 46.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
- (iii) any amount owing to the City in relation to:
 - (A) Taxes or tax withholdings, including workers' compensation levies;
 - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
 - (C) any order made by a court under the *Civil Remedies Act* (Ontario); and
 - (D) any fraud or other criminal offence committed against the City.

48. EXPIRY TRANSITION PROCEDURE

48.1 Expiry Transition

- (a) Project Co and the City shall each comply with the requirements of Schedule 23 – Expiry Transition Procedure.

49. INTELLECTUAL PROPERTY

49.1 Ownership of Intellectual Property

- (a) Subject to Section 49.4, the Ownership of Intellectual Property shall be as set out in Schedule 35 – Intellectual Property. Project Co and the City shall each comply with the requirements of Schedule 35 – Intellectual Property.

49.2 Licences to Intellectual Property

- (a) Schedule 35 – Intellectual Property sets out the terms on which Intellectual Property used or supplied in connection with the Project will be licensed.

49.3 Representation and Warranty

- (a) Project Co represents, warrants and covenants to the City that:
 - (i) Project Co has and shall have the full and unencumbered right to provide all rights and Licences 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 35 – Intellectual Property and its obligations therein;
 - (ii) any Intellectual Property Licences 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) Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the any such Intellectual Property; and
 - (B) no fact is known to Project 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 Project Co from fully complying with this Section 49.3(a).

49.4 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, Project Co or any Subcontractor and the City to the exclusion of any other party pursuant to this Project Agreement or in relation to the System Infrastructure, the Lands or Project Operations (the “**City Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that 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 Project 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.
- (b) The City hereby grants Project Co a royalty free, non-exclusive and non-transferable license, with a right to grant sub-licences to each Subcontractor, to use the City Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable. For clarity, the license granted to Project Co in accordance with this Section 49.4(b) shall not extend to any City Jointly Developed Materials.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to the City, in the case of the City Jointly Developed Materials.
- (d) In the event of any inconsistency between this Section 49.4 and any provision of Schedule 35 – Intellectual Property, the wording of this Section 49.4 shall prevail.

49.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 49 or Schedule 35 – Intellectual Property are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of the City, either at no charge or at the lowest reasonable fee, the grant of a license or sub-license 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 35 – Intellectual Property.

- (b) For the purposes of Section 49.5(a), “use” has the meaning set out in Schedule 35 – Intellectual Property, and includes the Limited Modification Rights.
- (c) Without limiting the obligations of Project Co under Section 49.5(a), Project Co shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in this Section 49 in accordance with Good Industry Practice. Project Co shall submit to the City Representative Project 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. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the City Representative has not objected. Project 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 49.5(c) may be referred for resolution in accordance with Schedule 26 - Dispute Resolution Procedure with reference to Good Industry Practice.

49.6 City Trade-Marks

- (a) Project Co shall not:
 - (i) use any City Trade-Marks without obtaining a trade-mark license on terms and conditions mutually satisfactory to the City and Project Co, each acting reasonably; or
 - (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.

49.7 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 49 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.

49.8 Government Use of Documents

- (a) Project 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) Project 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 Project Co) of any information supplied in confidence to the City by Project Co in circumstances where disclosure may be refused under Section 17(1) of FIPPA.

49.9 Restrictions

- (a) The Parties hereby agree that either Party may use the Project Know-How for any purpose, provided, however, that neither Project 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, 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 Project Co and the Project Co Parties to meet Project Co's obligations under this Project Agreement.

- (b) Project 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, 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, the Confidential Information of any City Party provided by the City, including the Output Specifications.
- (c) Nothing in this Section 49.9 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.

50. CONFIDENTIALITY/COMMUNICATIONS

50.1 Disclosure

- (a) Subject to Sections 50.1(b), 50.1(c) and 50.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, 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 Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project 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 50.1(b) and 50.1(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 Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under Section 17(1) of FIPPA.
- (c) Notwithstanding Section 50.1(b), but subject to Section 50.2, 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 Project Co (or any Project Co Party), the City may disclose such information.

50.2 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 Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), the City shall provide to Project 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 50.1(b). The Parties acknowledge and agree that the Annual Service Payment, but not the breakdown thereof, may be disclosed.
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 50.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 26 - 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.

50.3 Disclosure to Government

- (a) Project 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 sees fit.
- (b) For greater certainty, Project Co acknowledges and agrees that, subject only to the removal of any information which Project 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 Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by the City.

50.4 *Freedom of Information and Protection of Privacy Act (Ontario)*

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

50.5 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 50 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) Project 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 Project Co is obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that the City may use the Confidential Information of Project 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 Project Co prior to using any Confidential Information of Project 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 50.5(e)(iii) shall not apply to Confidential Information in relation to which a Party has been provided a license pursuant to Schedule 35 – Intellectual Property provided that the use of such Confidential Information is in accordance with Schedule 35 – Intellectual Property.

- (f) Without limiting the generality of this Section 50.5, Project Co shall comply with the document control and security protocol submitted by Project Co pursuant to Section 20.10 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.

50.6 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 Commercial Close, 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 46 or is otherwise required by the City for the purposes of performing (or having performed) the Project Operations, including the design or construction of the System Infrastructure, the operation, maintenance or improvement of the System Infrastructure, or any other operations or services the same as, or similar to, the Project Operations, or to exercise any right granted pursuant to Schedule 35 – Intellectual Property that survives the termination of this Project Agreement; or

- (ix) the information would not be exempt from disclosure under FIPPA.

50.7 Survival of Confidentiality

- (a) The obligations in Section 50.1 to Section 50.6 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

50.8 Communication and Stakeholder Engagement Obligations

- (a) The Parties shall comply with the provisions of Schedule 18 - Communications and Stakeholder Engagement Obligations. The Revenue Vehicle Supplier shall not be required to comply with the provisions of Schedule 18 - Communications and Stakeholder Engagement Obligations.

50.9 Confidentiality of Intellectual Property

- (a) Nothing in this Section 50 shall prevent the City from exercising any right granted to the City pursuant to Schedule 35 – Intellectual Property. The City shall have the right to disclose Confidential Information of Project Co Parties when exercising the rights granted pursuant to Schedule 35 – Intellectual Property in accordance therewith.

51. PERSONAL INFORMATION

51.1 General

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project 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 Project 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) Project Co shall, and shall require each Project 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 Project Co, each Project Co Party or to the Project Operations.
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 51.
- (e) Project Co shall allow the City on reasonable Notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 51 including the measures used by Project Co and each

Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of the City with respect to Project Co or each Project Co Party's handling of Personal Information.

- (f) Project Co shall not subcontract or delegate to any third party any of the Project Operations 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 51.

51.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project 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 Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall and shall cause each Project Co Party to restrict access to Personal Information to only those authorized employees and permitted Project Co Parties that require access to such Personal Information to fulfil their job requirements in connection with the Project Operations and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 51.
- (c) Upon termination of this Project Agreement or upon request of the City, whichever comes first, Project 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 Project Operations involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Section 51.2(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) Project 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 Project Co or any Project Co Party or any other breach of this Section 51.
- (f) The City may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within two Business Days of such request an agreement satisfactory to the City, acting reasonably, requiring such person to keep Personal Information confidential.

51.3 Personal Information

- (a) Project Co shall provide, and shall cause each Project 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 51 and any other provision of the Project Agreement, this Section 51 shall prevail.
- (c) The obligations in this Section 51 shall survive the termination of this Project Agreement.

52. INSURANCE AND PERFORMANCE SECURITY

52.1 General Requirements

- (a) Project Co and the City shall comply with the provisions of Schedule 24 - Insurance and Performance Security Requirements.

52.2 No Relief from Liabilities and Obligations

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

53. TITLE

53.1 Title

- (a) Title to each item and part of the System Infrastructure or the New Municipal 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 System Infrastructure and the New Municipal Infrastructure or are to be affixed or attached to the System Infrastructure and the New Municipal 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 System Infrastructure and the New Municipal Infrastructure or are to be affixed or attached to the System Infrastructure and the New Municipal Infrastructure.

54. INDEMNITIES

54.1 Project Co Indemnities to the City

- (a) Project Co shall indemnify and save harmless the City and 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) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (ii) 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 System Infrastructure or of any part of the New Municipal Infrastructure prior to being handed over to the City pursuant to Section 25.13, or to any equipment, assets or other property related thereto;
- (iii) the death or personal injury of any person;
- (iv) any physical loss of or damage to property or assets of any third party including, for clarity, any physical loss of or damage to the System Infrastructure, or New Municipal Infrastructure after Handover to the City;
- (v) any other loss or damage of any third party (except for Injurious Affection claims under (vi)); or
- (vi) Injurious Affection claims made by third parties,

in the case of Section 54.1(a)(i) to Section 54.1(a)(v), 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 Project Co or any act or omission of Project Co or any Project Co Party, and in the case of Section 54.1(a)(vi) arising, directly or indirectly, out of, or in consequence of, or involving or relating to, any breach of this Project Agreement by Project Co or any Project Co Party, except, in all cases, to the extent caused, or contributed to, by:

- (vii) the breach of this Project Agreement by the City; or
 - (viii) in respect of Section 54.1(a)(i), deliberate or negligent act or omission of the City or any City Party; or
 - (ix) in respect of Sections 54.1(a)(ii), 54.1(a)(iii), 54.1(a)(iv), 54.1(a)(v) or 54.1(a)(vi), any act or omission of the City or any City Party; or
 - (x) a deliberate or negligent act or omission of a System User that results in undue interference with Project Co's performance of the Maintenance and Rehabilitation Services and Project Co has been unable to take commercially reasonable steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of the City or an appropriate City Party, except to the extent:
 - (A) any such deliberate or negligent act or omission is caused or contributed to by Project Co or any Project Co Party; or
 - (B) the System User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (b) Project Co shall indemnify and save harmless the City and each of 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 Project Co herein.

- (c) Project Co shall indemnify and save harmless the City and each of 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 Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Authorizations, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Authorizations in accordance with this Project Agreement;
 - (ii) any Contamination on, in or under, or migrating to or from, the Lands, for which Project Co is responsible pursuant to Section 16.2; or
 - (iii) the provision of assistance by the City to Project Co pursuant to Section 9.7(e),
- 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 or any City Party.
- (d) Without prejudice to the City's rights under Section 43 and any other rights under this Project Agreement, if the City exercises its step-in rights under any Direct Agreement, Project Co shall indemnify the City for all obligations of Project Co assumed by the City under the Contracts, and for all reasonable costs and expenses incurred by the City in relation to the exercise of the City's rights.
- (e) Project Co shall indemnify the City for damages suffered or incurred on account of: (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to the City under Schedule 26 - Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated 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 Project Co to the City under Schedule 26 - Dispute Resolution Procedure, up to and including the date of payment.
- (f) Project Co shall defend, in accordance with the procedures of Section 54.3, and indemnify and save harmless the City and 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) any breach of Section 49.3;
 - (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 pursuant to this Project Agreement; or (y) any Intellectual Property or other materials used by Project Co or any

Project Co Party or any Subcontractor in the performance of the Project Operations 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 Project Co or the Subcontractors and not authorized by any of them;
- (iii) any claim, suit, action or proceeding by any Licensor alleging that Project Co or any Project 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 35 – Intellectual Property.
- (g) Without limiting and in addition to the obligations in Section 54.1(f), if, as a result of a claim under Section 54.1(f)(i) or Section 54.1(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 Project Co or any Subcontractor in the performance of the Project Operations and the Project (any or all of the foregoing the “**Infringing Material**”) becomes, or in Project Co’s opinion is likely to be, enjoined from use, Project 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.

54.2 City Indemnities to Project Co

- (a) The City shall indemnify and save harmless Project Co and the Project 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 Project Co or by any act or omission of Project Co or any Project Co Party;

- (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project 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 Project Co or by any act or omission of Project Co or any Project Co Party; and
- (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 Project Co or by any act or omission of Project Co or any Project Co Party,

provided that there shall be excluded from the indemnity given by the City any liability for the occurrence of risks against which Project 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 Project Co to comply with its obligations to properly insure under this Project Agreement.

- (b) The City shall indemnify and save harmless Project 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 herein.
- (c) The City shall indemnify Project 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 Project Co under Schedule 26 - Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by the City to Project Co under Schedule 26 - Dispute Resolution Procedure, up to and including the date of payment.
- (d) The City shall indemnify and save harmless Project 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 5.2(a).

54.3 Conduct of Claims

- (a) This Section 54.3 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 54, the Beneficiary shall give written Notice to the Indemnifier as soon as reasonably

practicable and in any event within 10 Business Days of receipt of the same. Such Notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.

- (c) Subject to Sections 54.3(d), 54.3(e) and 54.3(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 54.3 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 54.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the Notice from the Beneficiary under Section 54.3(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 54.3(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 54.3(c) applies. For greater certainty, Project 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 54.3(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 54.3 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.

54.4 Mitigation - Indemnity Claims

- (a) For greater certainty, Section 62.4 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.

55. LIMITS ON LIABILITY

55.1 Indirect Losses

- (a) Subject to Section 55.1(b), without prejudice to the City’s rights under the Payment Mechanism, or 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 54.1(a)(i), the exceptions in Sections 55.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, the City’s loss of use of the System Infrastructure or the New Municipal Infrastructure or a portion thereof, which for the purposes of Section 54.1(a)(i), shall be Direct Losses.

55.2 No Liability in Tort

- (a) Subject to the indemnities provided herein, neither the City nor any City Party shall be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to the City or any City Party 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.

55.3 Sole Remedy

- (a) Subject to:
 - (i) any other rights of the City expressly provided for in this Project Agreement; and
 - (ii) the City’s right to claim, on or after termination of this Project Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co except to the extent that the same has already been recovered by the City pursuant to this Project Agreement or has been taken into account to reduce any compensation payable by the City pursuant to Section 47,

the sole remedy of the City in respect of a failure to perform the Maintenance and Rehabilitation Services in accordance with this Project Agreement shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 55.3(a) 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.
- (c) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 24 - 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.

- (d) For clarity, the following shall apply with respect to the following deductions and liquidated damages set out in the Project Agreement:
- (i) the liquidated damages paid by Project Co pursuant to Section 25.4 and any amounts recovered under the indemnity in Section 54.1(a)(i) shall be the sole remedy in respect of (A) Project Co's failure to achieve Substantial Completion by the date established pursuant to Section 25.4(a) and (B) Project Co's failure to achieve Substantial Completion by the Scheduled Substantial Completion Date, but, for clarity, shall not limit the City's termination rights otherwise provided for herein;
 - (ii) the liquidated damages paid by Project Co pursuant to Section 10.4 shall be the sole financial remedy in respect of failure by Project Co to provide the Key Individuals named in Schedule 9 – Key Individuals (in respect of the Works) immediately after Commercial Close, but, for clarity, shall not be the City's sole remedy with respect to damages that may otherwise be incurred by the City with respect to a delay to the Project caused by Project Co as a result of Project Co's contravention of Section 10.4;
 - (iii) the liquidated damages paid by Project Co pursuant to Section 23.5 shall be the sole remedy in respect of Project Co's failure to obtain the minimum number of points required pursuant to Section 23.3(b) and to obtain LEED® Canada Certified 24 months after the Substantial Completion Date (where such failure is not as a direct result of any act or omission of the City or any City Party); and
 - (iv) the amounts deducted from the Substantial Completion Payment pursuant to Schedule 20 – Construction Period Payments shall not be the City's sole remedy in respect of Project Co's failure to perform in accordance with the Project Agreement.

55.4 Maximum Liability

- (a) Subject to Section 55.4(b), the maximum aggregate liability of each Party, shall,
- (i) in respect of all claims under Section 54 which arise during or are in respect of the Construction Period, not exceed \$[REDACTED] (the “**Construction Period Limit**”); and
 - (ii) in respect of all claims under Section 54 which arise during or are in respect of the Maintenance Period, not exceed \$[REDACTED] (the “**Maintenance Period Limit**”),

provided that the Construction Period Limit and the claims associated therewith shall be exclusive of the Maintenance Period Limit and the claims associated therewith. The Construction Period Limit and Maintenance Period Limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to

performance security or policies maintained in accordance with Schedule 24 - Insurance and Performance Security Requirements. Neither the Construction Period Limit nor the Maintenance Period Limit shall apply in cases of wilful misconduct or deliberate acts of wrongdoing.

- (b) Project Co's maximum aggregate liability in respect of all claims under Section 54.1(a)(i) and the liquidated damages paid by Project Co pursuant to Section 25.4 shall not exceed \$[REDACTED]. This limit shall be included within Project Co's Construction Period 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 maintained in accordance with Schedule 24 - Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 55.4 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.
- (d) For clarity, nothing in this Section 55.4 shall restrict or limit, or establish any maximum liability, in respect of any amount payable, by Project Co to the City, as the Lane Closure Adjustments pursuant to Schedule 7 – Mobility Matters.

56. DISPUTE RESOLUTION PROCEDURE

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 26 - Dispute Resolution Procedure.

57. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

57.1 Project Co Assignment

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, any of the Contracts or any agreement entered into in connection with this Project Agreement without the prior written consent of the City, which shall not be unreasonably withheld or delayed, and which shall, in any event, be conditional upon Project Co paying to the City any amount calculated under Section 57.6(a)(ii) and 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 so as to affect public confidence in the public transit system in the City of Ottawa or the Project.
- (b) Section 57.1(a) shall not apply to the grant of any security for any loan made to Project 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.

57.2 Assignment by the City

- (a) The City, upon providing written notice to Project Co, 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 Project Co and the City are parties:
 - (i) to the Province;

- (ii) as may be required to comply with Applicable Law;
 - (iii) to any minister of the Province;
 - (iv) to an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the City under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of the City's obligations hereunder and under the other Project Documents to which the City is party in respect of the period from and after the assignment; and
 - (v) in circumstances other than those described in Sections 57.2(a)(i) to 57.2(a)(iv), with the prior written consent of Project 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 Project Co that it will perform all the obligations of the City hereunder and under any agreement in connection with this Project Agreement to which Project 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 its interest in this Project Agreement in accordance with this Section 57.2.

57.3 Subcontractors

- (a) Project Co shall not subcontract any interest in this Project Agreement, or any of the Contracts, and shall not permit the Contractors to subcontract any interest in any of the Contracts 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 so as to affect public confidence in the public transit system in the City of Ottawa or the Project.
- (b) Project Co shall not terminate, agree to the termination of or replace any Contractor unless Project Co has complied with Sections 7.2(a), 57.3(c) and 57.3(d) or received the prior written consent of the City.
- (c) Subject to Section 57.3(d), if any of the Contracts 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 Contractor, shall cease to act in relation to the Project, Project 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, Maintenance and Rehabilitation Contractor and Revenue Vehicle Supplier that, and Project 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 Direct Agreement entered into by the person so replaced, unless any material variations are approved by the City, acting reasonably.

57.4 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 Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project.
- (b) No Change in Ownership of Project 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 so as to affect public confidence in the public transit system in the City of Ottawa or the Project; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations, the Governmental Activities or the availability of the System Infrastructure to System Users.
- (c) In the event that a person having Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project 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) Project Co shall provide notice to the City of any Change in Ownership of Project 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:
 - (i) a statement identifying all persons with an ownership interest in Project 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; and
 - (ii) a statement identifying the Excess Equity Gain arising from such Change in Ownership together with supporting calculations and documents.
- (e) Subject to Sections 57.4(a), (b) and (c) and to the payment by Project Co of any Excess Equity Gain under Section 57.6(a)(i), no Change in Control of Project Co, or of any Control Party, shall be permitted without the prior written consent of the City, not to be unreasonably withheld or delayed.
- (f) Project Co shall provide notice to the City of any proposed Change in Control of Project 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 Project 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;
- (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 Project Co or the relevant Control Party pursuant to such Change in Control; and
- (iii) a statement identifying the Excess Equity Gain which would arise from such proposed Change in Control together with supporting calculations and documents.

Following the delivery to the City of the notice referred to in this Section 57.4(f), Project 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 Project Co and delivery of the information required by the City, the City shall advise Project Co whether the person described in such particulars 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 so as to affect public confidence in the public transit system in the City of Ottawa or the Project.
- (h) Notwithstanding the definition of "Control Parties" set out Schedule 1 – Definitions and Interpretation, this Section 57.4 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.

57.5 City's Due Diligence

- (a) Project 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 Project Co's compliance with, Sections 57.1, 57.3 or 57.4, whether or not such consent is granted.

57.6 Gain Share

- (a) The City shall be entitled to receive a **[REDACTED]**% share of:
 - (i) any Excess Equity Gain arising from a Change in Ownership of Project Co; and
 - (ii) the amount from the proceeds of a sale of any of Project Co's assets to a third party, which sale includes an assignment, transfer, disposition of or other alienation of an interest in the Project Agreement by Project Co made in accordance with Section 57.1, that is equal to the amount that would have been payable in accordance with Section 57.6(a)(i) if such sale had proceeded as a Change in Ownership of Project Co.

For all sales of Equity Capital subsequent to the initial sale, Threshold Equity Sale Amount shall mean an Equity Sale Amount that would result in an Equity Sale IRR equal to the Equity Sale IRR of the previous sale of Equity Capital.

58. PROHIBITED ACTS

58.1 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 58.1(a)(i) shall not apply to Project Co or any Project 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 Project 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 Project Co, or on its behalf or to its knowledge, to 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 58.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project 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 Project 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 58;
- (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.

58.2 Remedies

(a) If Project Co or any Project 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 Project Co or by an employee acting under the direction of a director or officer of Project Co, then the City may give written Notice to Project Co and Section 43 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then the City may give written Notice to Project Co and Section 43 shall apply, unless, within 30 days of receipt of such Notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then the City may give written Notice to Project Co and Section 43 shall apply, unless, within 30 days of receipt of such Notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 57.3;
 - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then the City may give Notice to Project Co and Section 43 shall apply, unless, within 30 days of receipt of such Notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 58.2(a)(i) to 58.2(a)(iv), then the City may give Notice to Project Co and Section 43 shall apply, unless, within 30 days of receipt of such Notice, Project 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 Project Operations shall be performed by another person.
- (b) Any Notice of termination under this Section 58.2 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 58.2, the City shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 58.

58.3 Permitted Payments

- (a) Nothing contained in this Section 58 shall prevent Project 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.

58.4 Notification

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

58.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 58, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

59. NOTICES

59.1 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, facsimile or by hand, as follows:

If to Project Co:	[REDACTED]
	Email: [REDACTED]
	Attn.: [REDACTED]
If to City of Ottawa:	City of Ottawa 110 Laurier Ave West Ottawa, Ontario K1P 1J1 Mail code: [REDACTED]
	Email: [REDACTED]
	Attn: [REDACTED]

59.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 59.1, where any Notice is to be provided or submitted to the City Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co Representative:	[REDACTED]
----------------------------------	------------

Email: [REDACTED]

Attn: [REDACTED]

with a copy to:

[REDACTED]

Attn: [REDACTED]

If to the City Representative:

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

Email: [REDACTED]

Attn: [REDACTED]

59.3 Facsimile

- (a) 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 59.3.

59.4 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 59.1 or 59.2 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.

59.5 Deemed Receipt of Notices

- (a) Subject to Sections 59.5(b), 59.5(c) and 59.5(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; 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 Section 59.

- (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.

59.6 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 59.

60. EMERGENCY MATTERS

60.1 Emergency

- (a) From Financial Close until Substantial Completion Date, upon the occurrence of an Emergency, Project Co shall comply with the Emergency Response Plan.
- (b) From and after Substantial Completion Date, upon the occurrence of an Emergency, Project Co shall comply with its Emergency Response Plan in accordance with the Output Specifications.
- (c) If, in respect of any Emergency, the City notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by the City or any other statutory body, then Project Co shall, subject to Schedule 21 - 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 Section 60.1(a) or (b)).

61. INTENTIONALLY DELETED

62. GENERAL

62.1 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.

62.2 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.

62.3 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 Project 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 Project Co or the Project 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.

62.4 General Duty to Mitigate

- (a) The City and Project 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.

62.5 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, Project 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 Project Co and in the case of the City, its directors, officers and senior management, and the City Representative or the Project Co Representative, as applicable. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the “knowledge” of Project Co or of the City shall be construed in a manner consistent with the foregoing sentence.

62.6 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.

62.7 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 62.7 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.

62.8 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.

62.9 Enurement

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

62.10 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 26 - Dispute Resolution Procedure, the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

62.11 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.

62.12 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.

62.13 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.

62.14 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, 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 Project Agreement shall be in English.

62.15 Proof of Authority

- (a) The City and Project 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

Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind the City or Project Co, as applicable.

62.16 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.

62.17 City Party as Third Party Beneficiaries

- (a) The provisions of Sections 6.1, 6.2(a), 6.3(a), 8.1(b), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 9.5(a)(iv), 16.1(a), 20.3(h), 21.1, 33.7, 34.2(e), 54.1, and 55.2(a) and each other provision of this Project Agreement which is expressed to be for the benefit of a City Party or a City Party, as applicable, are:
 - (i) intended for the benefit of each City Party, or City Party, as applicable and, if so set out in the relevant Section, each City Party's or City Party's, as applicable, directors, officers employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, in respect of each City Party, the "**City Party Third Party Beneficiaries**", and in respect of each City Party, the "**City Third Party Beneficiaries**"); and
 - (ii) are in addition to, and not in substitution for, any other rights that the City Party Third Party Beneficiaries may have in contract or otherwise.
- (b) The City shall hold the rights and benefits of Sections 6.1, 6.2(a), 6.3(a), 8.1(b), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 9.5(a)(iv), 16.1(a), 20.3(h), 21.1, 33.7, 34.2(e), 54.1, and 55.2(a) and each other provision of this Project Agreement which is to the benefit of each City Party or City Party, as applicable, in trust for and on behalf of the City Party Third Party Beneficiaries or the City Third Party Beneficiaries, as applicable, and the City hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the City Party Third Party Beneficiaries or the City Third Party Beneficiaries, as applicable.

62.18 Copyright Notice

- (a) The Parties acknowledge that the City is the exclusive owner of the copyright in the Project Agreement.

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

CITY OF OTTAWA

Per:

Name: [REDACTED]

Title: [REDACTED]

TRANSITNEXT GENERAL PARTNERSHIP

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation.