

SCHEDULE 23

EXPIRY TRANSITION PROCEDURE

1. Independent Inspector

- 1.1 Not less than 126 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with the City's procurement policies, engage an independent and suitably qualified and experienced person (the "**Independent Inspector**") to carry out inspections of the System Infrastructure pursuant to this Schedule 23.
- 1.2 Project Co and the City shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector's engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 by the specified deadline, then the Independent Inspector shall be selected as follows:
 - (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide Notice thereof to the other Party; and
 - (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
 - (c) if the Parties have not selected a common person, then the Independent Inspector shall be selected in accordance with Schedule 26 – Dispute Resolution Procedure.

2. Condition of the System Infrastructure on Expiry

- 2.1 Subject to the exception specified in Section 2.2, on the Expiry Date:
 - (a) each element of the System Infrastructure (including, for the avoidance of doubt, the lands identified in the reference plan of survey produced by the post-completion survey set out in Section 25.12 of the Project Agreement and the ground soil located on those lands) shall be in a condition which is consistent with due performance by Project Co of its obligations under the Project Agreement and, in particular, is consistent with the System Infrastructure having been maintained in accordance with the Maintenance and Rehabilitation Requirements, and, with respect to the lands and the ground soil located on the lands, does not deviate from the Pre-Existing Environmental Site Conditions by reason of any Contamination for which Project Co is responsible pursuant to the Project Agreement;

- (b) each element of the System Infrastructure shall,
 - (i) be in good operating order (normal wear and tear excepted);
 - (ii) be capable of performing in accordance with the requirements set out in the Output Specifications; and
 - (iii) successfully complete a system performance demonstration that is substantially the same as the highest capacity Service Level (the “**System Infrastructure Performance Demonstration**”); and
- (c) each element of the System Infrastructure shall comply with Appendix C of the Maintenance and Rehabilitation Requirements,

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

2.2 For greater certainty, this Schedule 23 shall not apply to any New Municipal Infrastructure.

3. System Infrastructure Inspections and Performance Demonstrations

3.1 Project Co shall carry out a System Infrastructure Performance Demonstration,

- (a) 162 months following Substantial Completion;
- (b) not more than 126 months and not less than 121 months prior to the Expiry Date;
- (c) annually, no later than 90 days prior to the anniversary of the date of the System Infrastructure Condition Report (as such term is defined in Section 3.2); and
- (d) 90 days prior to the anticipated date of delivery of the Final System Infrastructure Condition Report (as such term is defined in Section 6.1).

During each System Infrastructure Performance Demonstration, Project Co shall use reasonable efforts to minimize any disruption to the Maintenance and Rehabilitation Services. For clarity, all costs and expenses related to each System Infrastructure Performance Demonstration shall be borne by Project Co.

3.2 The Parties shall cause the Independent Inspector to perform an inspection of the System Infrastructure and assess the results of the System Infrastructure Performance Demonstration that Project Co is required to carry out pursuant to Section 3.1(b), and to produce and deliver to each of the Parties a written report (a “**System Infrastructure Condition Report**”) not less than 120 months prior to the Expiry Date that:

- (a) identifies the condition of the System Infrastructure and each element of the System Infrastructure in relation to the Expiry Transition Requirements, and identify whether the System Infrastructure has failed the System Infrastructure Performance Demonstration;
- (b) assesses Project Co’s Expiry Transition Process Asset Preservation Work Schedule with the requirements defined in the Output Specifications;

- (c) identifies any works required to ensure the System Infrastructure and each element of the System Infrastructure will meet the Expiry Transition Requirements on the Expiry Date (the “**Expiry Transition Works**”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
 - (d) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Expiry Transition Works (the “**Expiry Transition Works Costs**”); and
 - (e) details how the Expiry Transition Works Costs were calculated.
- 3.3 The Parties shall cause the Independent Inspector to perform another inspection of the System Infrastructure and produce and deliver to each of the Parties an updated System Infrastructure Condition Report (each a “**Revised System Infrastructure Condition Report**”) on each anniversary of the date of the System Infrastructure Condition Report prepared in accordance with Section 3.2. At any time Project Co shall have the right to request that the Independent Inspector conduct the inspection described in Section 3.2 above, by delivering written notice to the City (each such additional test, an “**Additional Look-Forward Test**”) designating an additional testing date. Each Additional Look-Forward Test shall be conducted at the sole cost of Project Co. Project Co shall only be permitted to request three Additional Look-Forward Tests in aggregate.
- 3.4 The Asset Management Plan shall be amended and updated annually or more frequently as the City may reasonably request to include all Expiry Transition Works and all Expiry Transition Works Costs identified in either the System Infrastructure Condition Report or any Revised System Infrastructure Condition Report not already included in the then current Asset Management Plan.
- 3.5 Project Co shall carry out the Expiry Transition Works at its own cost notwithstanding that the actual cost of the Expiry Transition Works may be higher than the Expiry Transition Works Costs.
- 3.6 Either Party may dispute the System Infrastructure Condition Report or any Revised System Infrastructure Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with Schedule 26 – Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 26 – Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the System Infrastructure Condition Report or any Revised System Infrastructure Condition Report, then either the System Infrastructure Condition Report or any Revised System Infrastructure Condition Report, as the case may be, shall be deemed to be amended accordingly, as amended pursuant to Section 3.4, and all deductions and payments permitted or required by Section 3.7, shall be adjusted accordingly.
- 3.7 No later than 30 days following completion of the System Infrastructure Performance Demonstration contemplated in Section 3.1(a), Project Co shall provide the City with a report outlining the results of such performance demonstration (“**System Mid-Life Infrastructure Condition Report**”). The System Mid-Life Infrastructure Condition Report shall, to the extent applicable, be in conformance with the requirements of the System Infrastructure Condition Report as outlined in Section 3.2.

4. Payments To and From Escrow Account

- 4.1 Following the date for delivery of the System Infrastructure Condition Report, for the purposes of Section 4.2, the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the “**Expiry Rehabilitation Costs**”). Where the Expiry Transition Works Costs are greater than the Expiry Rehabilitation Costs, and the difference exceeds a threshold equal to [REDACTED]% ([REDACTED] percent) of the value of the then-current Expiry Rehabilitation Costs (the “**Expiry Rehabilitation Costs Threshold**”) the difference between the Expiry Transition Works Costs amounts exceeding the Expiry Rehabilitation Costs Threshold shall be apportioned equally over the Payment Periods from the date the System Infrastructure Condition Report is to be delivered hereunder to the Expiry Date (each installment being the “**Expiry Transition Amount**”). If the System Infrastructure Condition Report is delivered after the date for delivery hereunder, then the first installment to be paid shall also include the amounts to be paid under the installments that would have been payable prior to the date the System Infrastructure Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.4 or 3.6, the Parties agree that the Expiry Transition Amount shall be adjusted accordingly.
- 4.2 Subject to Sections 4.3 and 4.5, the City may deduct the Expiry Transition Amount from each Monthly Service Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the “**Escrow Account**”), the Expiry Transition Amount. If in any Payment Period, the Expiry Transition Amount is greater than the relevant Monthly Service Payment, the City may deduct the difference between the Expiry Transition Amount and the Monthly Service Payment from the next Monthly Service Payment or from such other Payment Period as otherwise agreed between the Parties.
- 4.3 The City shall not deduct any amount from a Monthly Service Payment as contemplated in Section 4.2 if, at such time, the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed.
- 4.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. The City shall consider such request within 10 Business Days and if the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then the City shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by the City to evaluate such request.
- 4.5 Following the date of any Revised System Infrastructure Condition Report, the Expiry Transition Amount shall be recalculated and if the amount in the Escrow Account (being the deductions of the Expiry Transition Amount made since the System Infrastructure Condition Report) together with the deductions scheduled to be made from the remaining Monthly Service Payments in accordance with Section 4.2 (and in accordance with any previous application of this Section 4.5) is less than the revised Expiry Transition Amount, then the City may deduct such shortfall, in equal installments, from each remaining Monthly Service Payment until the Expiry Date, and pay each installment into the Escrow Account and Section 4.4 shall continue to apply until the Expiry Date.

4.6 As an alternative to the deductions permitted by Sections 4.2 and 4.5 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 3.7, Project Co may (and if, at any time, the amounts which the City is permitted to deduct pursuant to Sections 4.2 and 4.5 is greater than the remaining Monthly Service Payments, Project Co shall), within 5 Business Days of a written request from the City, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of the City in an amount equal to the amounts which the City is permitted to deduct pursuant to Sections 4.2 and 4.5, in a form and from a surety or bank, as applicable, acceptable to the City.

5. Project Co Not Relieved of Obligations

5.1 Notwithstanding:

- (a) any agreement of the City to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of the City in any inspection under this Schedule 23; and
- (c) the complete or partial carrying out of the Expiry Transition Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by the Project Agreement, including the Output Specifications.

6. Final System Infrastructure Condition Report

6.1 The Parties shall cause the Independent Inspector to perform an inspection of the System Infrastructure and assess the results of the System Infrastructure Performance Demonstration that Project Co is required to carry out pursuant to Section 3.1, and to produce and deliver to each of the Parties a System Infrastructure Condition Report within 30 Business Days after the Expiry Date (the “**Final System Infrastructure Condition Report**”) that documents whether the System Infrastructure met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.

6.2 If the Final System Infrastructure Condition Report identifies any Expiry Transition Works, the City may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and the City shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Expiry Transition Security to Project Co.

6.3 Provided that the funds in the Escrow Account and/or the Expiry Transition Security is adequate to meet Project Co’s obligations in respect of the Expiry Transition Works identified in the Final System Infrastructure Condition Report, following any withdrawal from the Escrow Account or call upon the Expiry Transition Security in accordance with Section 6.2, Project Co shall have no further liability with respect to such Expiry Transition Works.

6.4 If no Expiry Transition Works are identified in the Final System Infrastructure Condition Report, the City shall, within 20 Business Days of receipt by the City of the Final System Infrastructure Condition Report, pay the funds in the Escrow Account (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co, unless the City disputes the Final System Infrastructure Condition Report, in which case the Escrow Account and Expiry

Transition Security shall be dealt with as determined in accordance with Schedule 26 – Dispute Resolution Procedure.