

**SCHEDULE 36  
SYSTEM EXTENSION**

**ARTICLE 1  
DEFINITIONS**

**1.1 Definitions**

- (a) Any capitalized term not defined in this Schedule 36 shall have the meaning given to such term in the Project Agreement. In this Schedule 36, unless the context otherwise requires:
- (i) **“Extension Contractor”** means a person or persons engaged by the City to perform any part of a System Extension, which person may or may not be Project Co.
  - (ii) **“Extension Maintenance Services”** means the maintenance and other work to be performed and services to be provided in respect of a System Extension including those set out in City Extension Requirements.
  - (iii) **“Extension Notice Response”** means the response delivered by the Project Co pursuant to Section 2.2(b).
  - (iv) **“Extension Permits, Licences and Approvals”** means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations needed to complete a System Extension described in City Extension Requirements in accordance with Applicable Law.
  - (v) **“Extension Work”** means the design, construction, installation, testing, commissioning and completion of a System Extension, including rectification of any Extension Work Minor Deficiencies, and any other activities required to enable or facilitate the commencement of the Extension Maintenance Services.
  - (vi) **“Extension Work Minor Deficiencies”** means any defects, deficiencies and items of outstanding work which would not materially impair the City’s use and enjoyment of the System Extension.
  - (vii) **“City Extension Requirements”** means the proposal delivered by the City pursuant to Section 2.2(c).
  - (viii) **“Integrated System Extension”** means the development, testing, commissioning and certification (including safety recertification in order to satisfy the Safety Management Plan) of additional facilities, infrastructure, electrical and mechanical equipment, computer hardware and systems, including communication and control systems, in order to connect with the System such that the Vehicles and all other components of the light rail transit system, as extended by the Integrated System Extension, function together using contiguous track works and an integrated service.
  - (ix) **“Non-Integrated System Extension”** means the development, testing, commissioning and certification (including safety recertification in order to

satisfy any safety and security management plan in place for the System) of additional facilities, infrastructure, electrical and mechanical equipment, computer hardware and systems, including communication and control systems, in order to form a transit system that connects with the System at a single interchange point such that the Vehicles and other components of the System do not form part of a coherent integrated system with the extended transit system.

- (x) “**Notice of Extension**” means the notice delivered by the City pursuant to Section 2.2(a).
- (xi) “**Project Co Extension Proposal**” means the proposal delivered by Project Co pursuant to Section 2.2(d).
- (xii) “**Reciprocal Agreement**” means the agreement to be executed in the event of a Non-Integrated System Extension as described in further detail in Section 3.1(e).
- (xiii) “**System**” means, for the purposes of this Schedule 36 only, the Expanded Trillium Line.
- (xiv) “**System Extension**” means either an Integrated System Extension or a Non-Integrated System Extension.

## ARTICLE 2 SYSTEM EXTENSION

### 2.1 System Extension

- (a) The City and Project Co acknowledge that the City may, in its sole discretion, elect to pursue one or more System Extensions during the Project Term.
- (b) The City may pursue any System Extension through one or more Extension Contractors, through a negotiated agreement with Project Co in accordance with this Schedule 36, or a combination of both. In the event the City elects to engage an Extension Contractor(s), the City may decide which persons are eligible for consideration, and such persons may or may not include Project Co or any of the Project Co Parties, in the City’s sole discretion, and the City may use any form of competitive procurement or other method of retaining an Extension Contractor(s) that the City in its sole discretion decides. If the City elects to negotiate an agreement with Project Co, the Parties shall follow the process set out in Section 2.2. Project Co acknowledges and agrees that the City’s decisions pursuant to this Section 2.1 are subject to approval by the City’s boards of directors and, in some circumstances, the Province, and shall be subject to Applicable Law. Project Co acknowledges that the City may have to designate that Project Co or a Project Co Party, be a restricted party that is not permitted to bid or otherwise participate in an open competitive procurement – for all or certain components of a System Extension in order to establish a fair and properly competitive procurement in the best interests of the City. Project Co acknowledges that it has no preferential rights of any kind, whether in the nature of an option or first opportunity to submit a bid or a proposal or to express interest in providing services, equipment or supplies, or to otherwise undertake any work in respect of a System Extension except as set out in this Schedule 36.

- (c) The City may, in its sole discretion, elect to implement all or part of a System Extension by way of a Variation in which case Section 37 of the Project Agreement and the provisions of Schedule 21 – Variation Procedure shall apply in respect of such System Extension.
- (d) The City may, in its sole discretion, elect to procure or negotiate, as the case may be, the performance of Extension Work, and/or Extension Maintenance Services in respect of a System Extension through consolidated or separate procurements or negotiations.
- (e) For clarity, the City may pursue a System Extension at any time or times pursuant to any of the alternatives set out in this Section 2.1, in its sole discretion. In the event the City has elected to pursue a System Extension in accordance with this Section 2.1, the City may, at any time prior to entering into a binding agreement in respect of the System Extension, in its sole discretion, elect to cease pursuing the System Extension under the chosen alternative and pursue the same System Extension under a different alternative process.

## **2.2 Negotiation between the City and Project Co of Extension Work and/or Extension Maintenance Services**

- (a) If the City notifies Project Co that it wishes to negotiate with Project Co to perform any or all of the Extension Work and/or Extension Maintenance Services, the City shall provide Project Co with a Notice of Extension which will include information respecting the project, including:
  - (i) a description of the scope of the Extension Work and/or the Extension Maintenance Services, as applicable;
  - (ii) preliminary “term sheet level” output specifications for the Extension Work and/or the Extension Maintenance Services, as applicable, including: details with respect to alignment, number of stations, length of track (in kilometres), modelling results and performance expectations with respect to the System Extension, as-builts for existing System infrastructure and utilities, condition reports, results of environmental assessments, development plans, stakeholder engagement information, electrical and mechanical requirements specific to the System Extension, location and the City requirements of any maintenance and storage facilities, and
  - (iii) a preliminary schedule and required timelines for completion of the Extension Work and/or the Extension Maintenance Services, as applicable.

For clarity, the City may, in its sole discretion, issue an Extension Notice in respect of any one of or all of Extension Work, and/or Extension Maintenance Services.

- (b) No later than 30 days after the date of receipt of the Notice of Extension, Project Co shall deliver to the City its Extension Notice Response advising the City whether or not Project Co desires to proceed to the next stage of negotiation with the City in respect of the System Extension. In the event Project Co desires to proceed, Project Co shall, no later than 60 days after the delivery of its Extension Notice Response, deliver to the City a preliminary cost estimate and schedule for the Extension Work and/or the Extension Maintenance Services, as applicable.

- (c) If the City elects, in its sole discretion, to continue to consider Project Co for the Extension Work and/or the Extension Maintenance Services, as applicable, the City shall, no later than 120 days after the date of receipt of Project Co's Extension Notice Response, deliver its City Extension Requirements. City Extension Requirements (which shall be non-binding on the City) shall include:
  - (i) a draft heads of terms agreement for the Extension Work and/or the Extension Maintenance Services, as applicable;
  - (ii) draft output specifications and commissioning processes for the System Extension;
  - (iii) draft "term sheet level" parameters of the payment mechanism to be used in respect of the Extension Work and/or the Extension Maintenance Services; and
  - (iv) guidelines with respect to the structure of construction or permanent financing to be secured by Project Co.
  
- (d) No later than 150 days after the date of Project Co's receipt of City Extension Requirements, Project Co shall deliver to the City the Project Co Extension Proposal which shall be non-binding on Project Co. The Project Co Extension Proposal shall include:
  - (i) a detailed cost estimate and construction schedule in respect of the Extension Work and/or the Extension Maintenance Services, as applicable;
  - (ii) a detailed description of any impact the Extension Work and/or the Extension Maintenance Services, as applicable, would have on Project Co's activities under the Project Agreement, including, if applicable, any schedule impact on the provision of the System, the public and third party infrastructure and completion of the Works;
  - (iii) a detailed description of any impact on expected usage of utilities for the current Contract Year and subsequent Contract Years;
  - (iv) any contemplated amendments to the Project Agreement to coordinate the Extension Work and/or the Extension Maintenance Services, as applicable, with Project Co's obligations in respect of the Project Operations;
  - (v) the expected Direct Costs of Project Co and each subcontractor of Project Co that will be incurred in respect of the Extension Work and/or the Extension Maintenance Services, as applicable, including:
    - (A) any capital expenditure that will be incurred; and
    - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
  - (vi) preliminary terms of the financing structure specified in City Extension Requirements;

- (vii) Project Co's confirmation that the projected internal rate of return on any equity capital required in respect of the Extension Work and/or the Extension Maintenance Services, as applicable, will be the Base Case Equity IRR;
- (viii) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the Extension Work and/or the Extension Maintenance Services, as applicable; and
- (ix) any Extension Permits, Licences and Approvals that must be obtained or any Permits, Licences and Approvals amended for the Extension Work and/or the Extension Maintenance Services, as applicable, to be implemented;

in each case, together with such supporting information and justification as is reasonably required.

- (e) In preparing the Project Co Extension Proposal, Project Co shall include sufficient information to demonstrate to the City's satisfaction, acting reasonably, that:
  - (i) Project Co has used or has obliged each subcontractor (or will oblige any subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders to minimize costs in respect of the System Extension;
  - (ii) except as otherwise set out herein, all costs of Project Co and each Subcontractor are limited to Direct Costs;
  - (iii) Project Co and any subcontractor shall charge only the margins for overhead and profit as set out in Appendix B to Schedule 21 – Variation Procedure (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co or any subcontractor is calculated on any other margin under the Project Agreement of Project Co or any subcontractor), and no other margins or mark ups;
  - (iv) the margins for overheads and profit as set out in Appendix B to Schedule 21 – Variation Procedure as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by any subcontractors;
  - (v) all costs of completing the Extension Work and/or the Extension Maintenance Services, as applicable, including Capital Expenditures, reflect labour rates applying in the open market to providers of services similar to those required for the Extension Work and/or the Extension Maintenance Services, as applicable;
  - (vi) Project Co has mitigated or will mitigate the impact of the Extension Work and/or the Extension Maintenance Services, as applicable, including on the Works Schedule, the performance of the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred; and
  - (vii) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment

required in respect of the Extension Work and/or the Extension Maintenance Services, as applicable, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to the City, including using commercially reasonable efforts to mitigate such costs.

- (f) Subject to Section 2.2(g), as soon as practicable after the receipt of the Project Co Extension Proposal, the City and Project Co shall, in good faith and acting reasonably, negotiate the terms of the binding agreement for the performance of the Extension Work and/or Extension Maintenance Services, as applicable, as well as any necessary amendments to the Project Agreement and any relevant project documents, based on the contents of City Extension Requirements and the Project Co Extension Proposal.
- (g) Notwithstanding anything contained in this Schedule 36, except as may be the subject matter of a competitive procurement process, no agreement relating to the subject matter of this Schedule 36 shall be effective unless entered into in writing by each of the Parties and the entering into of same shall be subject to each Party's sole discretion. Either Party may, in their sole discretion, elect to cease negotiations at any time in the process set out in this Section 2.2 prior to the signing of such written agreement.

### **ARTICLE 3 PROJECT CO COOPERATION**

#### **3.1 Project Co Cooperation with the City and Interface with an Extension Contractor**

- (a) In the event the City pursues all or any part of a System Extension with any one or more Extension Contractors, subject to Section 3.1(b), Project Co shall, within a reasonable period of time, use commercially reasonable efforts to provide such assistance to the City as the City may request, acting reasonably. Such assistance shall include:
  - (i) providing to the City such information which the City may reasonably require concerning the System and the public and third party infrastructure or the operations, maintenance and rehabilitation of the System and the public and third party infrastructure necessary for the purposes of the City procuring or entering into (or considering procuring or entering into) contracts for design, construction, and/or operations, and/or maintenance of any System Extension and in particular (but without limitation to) for the purposes of compiling and making available any information memorandum, invitation to tender, technical specifications, draft contract or other document connected with such purposes;
  - (ii) the development of technical specifications in respect to the Extension Work and the Extension Maintenance Services, as applicable, and the evaluation of designs proposed by prospective Extension Contractors to ensure compatibility with the Trillium Line Extension, electrical and mechanical equipment, Vehicles already supplied, and other items as specified by the City;
  - (iii) permitting the City access to relevant information respecting the System, electrical and mechanical equipment and Vehicles already supplied, and other items as specified by the City;

- (iv) advising the City on potential modifications to the Extension Work and the Extension Maintenance Services, as applicable, that could result in cost savings or other benefits to the City (If Project Co identifies any cost savings to the Maintenance and Rehabilitation Services or the Extension Maintenance Services, such savings shall be shared equally by the City and Project Co by way of an adjustment to the Monthly Service Payments);
- (v) the development of an interface protocol between the City, Project Co and the Extension Contractors;
- (vi) liaising with Extension Contractors (or any of their consultants and advisors) who are performing any aspect of the design, construction, maintenance or operation of any System Extension, as applicable, in accordance with the reasonable requests of the City or any Extension Contractors; and
- (vii) subject to the prior reasonable notice and reasonable requirements of Project Co with regard to health and safety, co-operate and co-ordinate with any Extension Contractor (and any of their consultants and advisers) who has been given access by the City to those parts of the System and public and/or third party infrastructure to which access is required for the efficient carrying out of such design, construction, maintenance or operation of any System Extension by the Extension Contractor.

The City and Project Co's obligations under this Section 3.1(a) shall be subject to and in accordance with Schedule 35 – Intellectual Property.

- (b) The City shall pay Project Co reasonable fees in respect of the assistance Project Co provides pursuant to this Section 3.1. Such fees shall be agreed by the parties prior to Project Co providing assistance to the City and shall be invoiced on a monthly basis (or such other period as the parties may agree) and shall be paid within 30 days of receipt of an invoice from Project Co. Each Project Co invoice shall set out in reasonable detail, the nature of assistance provided in the invoice period, the personnel involved and the time committed by Project Co personnel in respect of such assistance.
- (c) As soon as practicable after the City provides notice to Project Co that the City has reached a binding agreement with an Extension Contractor, the City and Project Co shall meet with the Extension Contractor(s) and, in good faith and acting reasonably, negotiate and execute an interface agreement and/or construction procedures agreement to govern matters relating to the coordination of Project Co's activities in respect of the Project Operations and the Extension Contractor's activities relating to the Extension Work and/or the Extension Maintenance Services, as applicable. The City shall also include, in its agreement with any Extension Contractor, an obligation on the Extension Contractor to negotiate with the City and Project Co the terms of the interface agreement and/or construction procedures agreement in good faith and acting reasonably.
- (d) In the event of an Integrated System Extension, the agreement to be negotiated between the City, Project Co and each Extension Contractor pursuant to Section 3.1(c) shall include provisions related to:

- (i) the rights and obligations of the City, Project Co and the Extension Contractor in respect of the physical linking, testing and commissioning, safety and system certification of the System, public and third party infrastructure and the Integrated System Extension operations on the System at the same time as Project Co;
  - (ii) commissioning requirements with respect to additional vehicles that are required as a result of the Integrated System Extension and the extended lines;
  - (iii) a protocol with respect to the testing of the entire System and Integrated System Extension to ensure integration and ability for the operation of the entire line as contemplated in the Output Specifications and the final output specifications developed in respect of the Integrated System Extension;
  - (iv) provision for the sharing of the Trillium Line Extension if the City so requires in which case Project Co shall be entitled to a reasonable fee as negotiated between the parties in good faith and acting reasonably;
- (e) In the event of a Non-Integrated System Extension, the City, Project Co and the Extension Contractors shall execute a reciprocal agreement in a form to be agreed to between the parties acting reasonably and negotiating in good faith (the “**Reciprocal Agreement**”). The Reciprocal Agreement shall govern the rights of the parties in respect of the station, infrastructure or other location on the System which has an interchange point with the Non-Integrated System Extension and shall govern matters such as:
- (i) reciprocal easements or other rights-of-access;
  - (ii) appropriate cost sharing arrangements;
  - (iii) sharing of information;
  - (iv) decision making process regarding matters affecting the interchange between the System and the Non-Integrated System Extension; and
  - (v) mutual repair obligations of structural or other elements in common between the System, the public and third party infrastructure and the Non-Integrated System Extension.
- (f) This Article 3 is without prejudice to the City’s ability to instruct a Variation in accordance with Schedule 21 – Variation Procedure.

#### **ARTICLE 4 EQUITY PURCHASE OPTION**

##### **4.1 Equity Purchase Option**

- (a) The City may exercise the Equity Purchase Option (outlined in Section 4.1(b) below) in connection with any System Extension in respect of which capital costs are reasonably anticipated to exceed \$[REDACTED] and any one of the following events has occurred (each a “**Triggering Event**”):



- (i) Project Co fails to remedy a material breach of this Schedule 36 (including a failure to diligently progress any of the activities that Project Co performs, or is required to perform, under this Schedule 36) within 20 Business Days of having received written notice from the City identifying the material breach;
  - (ii) in the City's view (acting reasonably and in good faith), it is unlikely that the parties will be able to reach agreement on any of the matters provided or which ought to have been provided for pursuant to this Schedule 36; or
  - (iii) the City has rejected the Project Co Extension Proposal and in the City's view (acting reasonably and in good faith) it is unlikely that the parties will be able to reach agreement on the Project Co Extension Proposal.
- (b) Following a Triggering Event, upon written notice to Project Co, the City may exercise the option to purchase all of the Equity Capital (the “**Equity Purchase Option**”) pursuant to the terms and conditions of the Equity Purchase Agreement attached hereto as Exhibit A.

Exhibit A

**Form of Equity Purchase Agreement**

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**THIS EQUITY PURCHASE AGREEMENT** is made on 2018

**BETWEEN:**

1. THE CITY OF OTTAWA (the **City**);
2. \_\_\_\_\_ (\_\_\_\_\_);
3. \_\_\_\_\_ (\_\_\_\_\_); and
4. \_\_\_\_\_ (\_\_\_\_\_), and
5. (the parties in (2) - (4)<sup>1</sup> together, the **Sellers**, and each, a **Seller**).

**RECITALS:**

- (A) Each Seller is the registered holder and the beneficial owner of its Option Securities.
- (B) Each Seller wishes to grant to the City the Equity Purchase Option on the terms and conditions of this Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Project Agreement**

All capitalized terms used but not defined herein shall have the meanings ascribed to such terms as set forth in the Project Agreement.

**1.2 Definitions**

The following definitions apply in this Agreement:

**Accounts and Liabilities Certificate** means a certificate in the form of Schedule 2, signed by two directors of each Seller setting out:

- (a) the Project Co Accounts and Receivables as at the Settlement Date; and
- (b) the Project Co Liabilities as at the Settlement Date.

**Additional Equity Securities** means any Equity, and includes any securities which are convertible into Equity, that are issued after the date of this Agreement.

**Assessment** means something which creates or evidences an obligation to pay an ascertained amount for Tax at or before a fixed time, including but not limited to:

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<sup>1</sup> To be populated with identities of shareholders of Project Co

- (a) any document received from a Governmental Authority administering any Tax assessing, imposing, claiming or indicating an intention to claim any Tax (such as an assessment, penalty notice or demand); or
- (b) filing of a Tax return or a request for amendment of an assessment under applicable Tax laws.

**Authorization** means an authorization, consent, declaration, exemption, notarization or waiver, however it is described; and in relation to anything that could be prohibited or restricted by law if a Governmental Authority acts in any way within a specified period, the expiry of that period without that action being taken, including any renewal or amendment.

**Business Day** means any day other than Saturday, Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Ottawa, Ontario.

**Completion** means completion of the sale and purchase of the Option Securities following exercise of the Equity Purchase Option as described in clause 5 (Completion).

**Dispute** means any dispute or difference between the parties (other than a dispute or difference as to the market discount rate or the Fair Value of Equity determined pursuant to Schedule 3 that does not involve manifest error or fraud) arising out of, relating to or in connection with this Agreement or the Equity Purchase Option, including any dispute or difference as to the formation, validity, existence or termination of this Agreement.

**Encumbrance** means:

- (a) a Security Interest;
- (b) any third party interest (for example, a trust or an equity);
- (c) a right of a person to acquire a share or to restrain someone from acquiring a share (including under an option, a right of pre-emption or a right of first refusal, such as one in a shareholders' agreement or in a constitution);
- (d) a right of any person to purchase, occupy or use an asset (including under an option, agreement to purchase, licence, lease or hire purchase);
- (e) an easement, restrictive covenant, caveat or similar restriction over property; or
- (f) an agreement to create any of the above or to allow any of the above to exist, but excludes a Permitted Security Interest.

**Equity** means any securities (i) having voting rights in the election of the Board of Directors not contingent upon default, (ii) evidencing an ownership interest in Project Co or (iii) convertible into or exercisable or exchangeable for any of the foregoing (other than unexercised options issued to an employee, officer or director of Project Co or any subsidiary pursuant to an incentive option plan or otherwise), or any agreement or commitment to issue any of the foregoing.

**Equity Purchase Exercise Notice** means a notice in the form of Schedule 1 given by the City to the Sellers in respect of the Equity Purchase Option in accordance with clause 3 (*Exercise of the Equity Purchase Option*).

**Equity Purchase Exercise Notice Date** means the date on which the Equity Purchase Exercise Notice is given by the City to the Sellers.

**Equity Purchase Option** means the option granted by each Seller to the City under clause 2 (*Grant of the Equity Purchase Option*).

**Equity Purchase Option Validity Period** has the meaning set out in clause 7.2 (*Seller undertakings*).

**Fair Value** has the meaning set out in clause 1(b) of Schedule 3.

**Governmental Authority** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Lifecycle Payment Payable** means in respect of a month, as shown in the Financial Model, that are payable for that month (if any) by Project Co.

**Miscellaneous Current Assets** means amounts which constitute "current assets" of Project Co but excluding any amounts in relation to Lending Agreements, O&M and SPV (incl. Insurance) Costs Payable and Lifecycle Payment Payable.

**Miscellaneous Current Liabilities** means amounts which constitute "current liabilities" of Project Co but excluding any amounts in relation to Lending Agreements, O&M and SPV (incl. Insurance) Costs Payable and Lifecycle Payment Payable.

**Net Settlement Amount** means the amount calculated in accordance with clause 4.1 (Net Settlement Amount).

**O&M and SPV (incl. Insurance) Costs Payable** means in respect of a month, as shown in the Financial Model, that are payable for that month (if any) by Project Co.

**Option Securities** means

- (a) in respect of \_\_\_\_, all of the \_\_\_\_ of Project Co;
- (b) in respect of \_\_\_\_, all of the \_\_\_\_ of Project Co; and
- (c) in respect of \_\_\_\_, all of the \_\_\_\_ of Project Co.

**Permitted Security Interest** means a Security Interest created under a Project Agreement, or each of the Lending Agreements.

**Project Co** means \_\_\_\_\_.

**Project Co Accounts and Receivables** means, the aggregate, at the Settlement Date, of any amounts that are due to, but have not been received by, Project Co, relating to the Service Payment Receivable, plus the all credit balances on any bank accounts held by or on behalf of Project Co and any Miscellaneous Current Assets as at the Settlement Date:

**Project Co Liabilities** means, the aggregate, at the Settlement Date, of any amounts that are due but have not been paid by Project Co, relating to:

- (a) the O&M and SPV (incl. Insurance) Costs Payable; and
- (b) the Lifecycle Payment Payable,

plus the balance of Miscellaneous Current Liabilities as at the Settlement Date.

**Relevant Proportion** means, in respect of each Seller, the respective proportion which is equal to that Seller's ownership percentage in Project Co as at the Settlement Date.

**Security Interest** means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person or any interest in relation to personal property provided for by a transaction that in substance secures payment or performance of an obligation or otherwise would be considered to be a "security interest" that is subject to the *Personal Property Security Act* (Ontario).

**Service Payment Receivable** means in respect of a month, the service payment for that month (if any) payable by the City to Project Co, calculated in accordance with the Project Agreement, as adjusted in accordance with the Project Agreement.

**Settlement Amount** means the amount determined in accordance with Schedule 3 (*Settlement Amount Calculation*) which shall never be less than \$[REDACTED] (such that if the amount is a negative number it will be deemed to be \$[REDACTED]).

**Settlement Date** means the date for settlement in respect of the exercise of the Equity Purchase Option specified in the Equity Purchase Exercise Notice being no earlier than two months, and no later than nine months, after the Equity Purchase Exercise Notice Date, and in any event which must be after Substantial Completion.

**Tax** means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Governmental Authority, together with any related interest, penalty, fine or other charge.

### 1.3 Interpretation

In this Agreement:

- (a) the division of this Agreement into clauses and the insertion of headings are for convenient reference only and are not to affect or be used in the construction or interpretation of this Agreement;



and unless there is something in the subject matter or context inconsistent therewith:

- (b) **"person"** means a natural person, partnership, limited partnership, limited liability partnership, syndicate, sole proprietorship, corporation or company (with or without share capital), limited liability company, stock company, trust, unincorporated association, joint venture or other entity or Governmental Authority;
- (c) a reference to a document (including this Agreement) is to that document as amended, restated, varied, novated, ratified or replaced from time to time;
- (d) unless otherwise specifically indicated, any reference to a statute in this Agreement refers to that statute and the regulations and ministerial orders made under that statute, as the same may, from time to time, be amended, re-enacted or replaced;
- (e) words in the singular number include the plural and are to be construed as if the plural had been used and vice versa;
- (f) words importing the use of any gender include all genders where the context or party referred to so requires, and the rest of the sentence is to be construed as if the necessary grammatical changes had been made;
- (g) a reference to a party, clause, schedule, exhibit, annexure or attachment is a reference to a party, clause, schedule, exhibit, annexure or attachment to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, annexures and attachments to it;
- (h) the words “including” and “includes” mean “including (or includes) without limitation”, and in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”. If the last day of any such period is not a Business Day, such period will end on the next Business Day; and
- (i) when calculating the period of time “within” which or “following” which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is to be excluded from the calculation. If the last day of any such period is not a Business Day, such period will end on the next Business Day; and
- (j) all monetary amounts in this Agreement, unless otherwise specified, are stated in Canadian currency.

#### 1.4 Business Day

If the day on or by which any thing is to be done under this Agreement is not a Business Day, that thing must be done no later than the next Business Day.

## **2. GRANT OF THE EQUITY PURCHASE OPTION**

### **2.1 Call Option**

In consideration of the payment of the sum of \$[REDACTED] (receipt of which is acknowledged by each Seller), and upon the City providing an Equity Purchase Exercise Notice to the Sellers, the Sellers each grant to the City the right to require the Sellers to each sell their respective Option Securities to the City or its nominee (as the City may elect) in accordance with this Agreement for a Seller's Relevant Proportion of the Net Settlement Amount.

### **2.2 Nature of the Equity Purchase Option**

The Equity Purchase Option confers on the City the right, but not the obligation, to give the Sellers an Equity Purchase Exercise Notice at any time during the period described in clause 3.1 (*Exercise of the Equity Purchase Option*); and on exercise of the right conferred by clause 2.1 in accordance with this Agreement, requires the Sellers to each sell their respective Option Securities to the City or to its nominee (as the City may direct) in accordance with this Agreement.

### **2.3 Title, property and risk**

Until Completion, the title to, property in and risk of the Option Securities remain solely with the Sellers, but they pass to the City on and from Completion.

## **3. EXERCISE OF THE EQUITY PURCHASE OPTION**

### **3.1 Exercise of the Equity Purchase Option**

The City may exercise the Equity Purchase Option by serving an Equity Purchase Exercise Notice contemporaneously on the Sellers at any time within 45 Business Days after the occurrence of any of the events specified in Section 4.1 of Schedule 36 of the Project Agreement.

### **3.2 Exercise in relation to all Option Securities**

The Equity Purchase Option may only be exercised in respect of all (but not less than all) of the Option Securities.

### **3.3 Effect of serving an Equity Purchase Exercise Notice**

As of the Equity Purchase Exercise Notice Date a contract arises between the City and each Seller under which on the Settlement Date:

- (a) each Seller must sell to the City or its nominee (as the City may elect) all of its Option Securities free from any Encumbrance or restriction on transfer; and
- (b) the City must buy, or ensure its nominee buys, all the Option Securities from each Seller,

for each Seller's Relevant Proportion of the Net Settlement Amount, apportioned as against each Seller and such apportionment taking into account any warranty disclosures by, or in respect of, each Seller', and otherwise in accordance with the terms of this Agreement.

#### **4. NET SETTLEMENT AMOUNT**

##### **4.1 Net Settlement Amount**

The Net Settlement Amount will be:

- (a) the Settlement Amount;

plus:

- (b) the Project Co Accounts and Receivables as set out in the Accounts and Liabilities Certificate delivered on the Settlement Date in accordance with clause 5.2(a),

less:

- (c) the Project Co Liabilities (but excluding any Tax liabilities) as set out in the Accounts and Liabilities Certificate delivered on the Settlement Date in accordance with clause 5.2(a),

if and to the extent the amounts under clauses 4.1(b) and 4.1(c) differ from the amounts taken into account in the valuation undertaken pursuant to Schedule 3 and provided that:

- (d) if the Net Settlement Amount is **[REDACTED]**, it will be deemed to be **[REDACTED]**.

#### **5. COMPLETION**

##### **5.1 Settlement Date**

Completion of the sale and purchase of the Option Securities must take place at 9.00 a.m. (Eastern Time) on the Settlement Date (or, if the Settlement Date is not a Business Day, on the next Business Day to occur after the Settlement Date) at such place as the City may nominate before the Settlement Date.

##### **5.2 Obligations on settlement**

- (a) Each Seller must deliver, or cause to be delivered (as appropriate) to the City (or, as the City may elect, the City's nominee):
  - (i) a duly completed Accounts and Liabilities Certificate;
  - (ii) duly executed transfers of its Option Securities in favour of the City or its nominee, as the case may be;
  - (iii) the original certificates for its Option Securities, or an indemnity acceptable to the City (or, as the City may elect, the City's nominee) if any certificates are found to be missing or not provided;
  - (iv) evidence to the City's (or, as the City may elect, the City's nominee's) satisfaction that any Encumbrances granted in respect of its Option Securities (other than Permitted Security Interests) have been released and discharged;

- (v) a certified copy of the power of attorney pursuant to which any attorney has executed the transfers of its Option Securities;
  - (vi) the written resignations of each officer and director of Project Co in a form acceptable to the City (or, as the City may elect, the City's nominee), to take effect on and from Completion; and
  - (vii) duly completed authority to alter the signatories of each bank account of each of Project Co;
- (b) each Seller shall procure that on or before the Settlement Date a duly convened meeting of its directors is held, and that resolutions for the following are passed at that meeting:
- (i) to approve the transfer of its Option Securities to the City or its nominee (as the City may elect), to register the transfers of the Option Securities, to issue new share certificates and unit certificates (if applicable) for the Option Securities in the name of the City or its nominee (as the City may elect), and to cancel the existing share certificates;
  - (ii) to appoint as directors, secretaries and public officers of Project Co the persons nominated by the City (or, as the City may elect, by the City's nominee), subject to the receipt of duly signed consents to act of such persons;
  - (iii) to revoke any existing authority to operate any bank account or safety deposit box with a bank or a financial institution, and to appoint instead as signatories of any such bank accounts and deposit boxes persons nominated by the City (or, as the City may elect, by the City's nominee); and
  - (iv) to note the resignation of each existing director, secretary and public officer effective as of Completion; and
- (c) subject to the performance by the Sellers of all of their respective obligations under clauses 5.2(a) and (b), the City or its nominee, as the case may be, must pay to each Seller in immediately available funds each Seller's Relevant Proportion of the Net Settlement Amount apportioned as against each Seller on the basis of any warranty disclosures by, or in respect of, each Seller, on the Settlement Date.

### **5.3 Failure to deliver**

The Sellers each irrevocably authorizes and appoints the City (or, as the City may elect, the City's nominee) as its attorney to execute on its behalf transfers of its Option Securities naming the City or its nominee (as the City may elect) as transferee, if that Seller fails to deliver transfers in accordance with clause 5.2(a)(ii).

## **6. SELLERS REPRESENTATIONS AND WARRANTIES**

### **6.1 General representations and warranties**

The Sellers each represent and warrant that:

- (a) **(status and power)** it is a corporation incorporated, organized and existing under the laws of [\_\_\_\_\_] and has the corporate power and authority to own and operate its property and assets, carry on its business and enter into and perform its obligations under this Agreement;
- (b) **(corporate authority)** the execution, delivery and performance by it of this Agreement;
  - (i) has been duly authorized by all necessary corporate action on its part; and
  - (ii) do not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance) result in a breach or a violation of, or conflict with, or allow any other person to exercise any rights under, any of its constating documents shareholders' agreements, by-laws or resolutions of its board of directors or shareholders.
- (c) **(Authorizations)** the execution, delivery and performance by it of this Agreement does not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance):
  - (i) result in a breach or a violation of, conflict with, or cause the termination or revocation of, any Authorization held by it or necessary to the ownership of the Option Securities, the operation of the Project;
  - (ii) result in or require the creation of any lien upon any of the Option Securities;
  - (iii) result in a breach or a violation of, or conflict with, any judgement, order or decree of any Governmental Authority; or
  - (iv) result in a breach or a violation of, or conflict with, any Law applicable to it.
- (d) **(execution and binding obligation)** this Agreement constitutes legal, valid and binding obligations of it, as the case may be, enforceable against it in accordance with their respective terms;
- (e) **(no contravention)** its execution, delivery or performance of this Agreement, or the carrying out by it of the transactions that it contemplates, does not and will not violate or conflict with, or constitute a default under:
  - (i) any law to which it or any of its property is subject or any order of any Governmental Authority that is binding on it or any of its property;
  - (ii) any Authorization or Applicable Law;
  - (iii) its constating, formation or organizational documents, including any by-laws; or
  - (iv) 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;

- (f) **(commercial benefit)** the execution, delivery and performance by it of this Agreement to which it is a party, and the carrying out by it of the transactions that this Agreement contemplates, is for its corporate benefit and in its commercial interests;
- (g) **(solvency)** it and Project Co, is able to pay its debts as and when they generally become due and payable;
- (h) **(no trust)** it is not entering into this Agreement as trustee of any trust or settlement;
- (i) **(no litigation)** there are no actions, suits or proceedings, at law or in equity, by any person, nor any arbitration, administrative or other proceeding by or before (or to its knowledge any investigation by) any Governmental Authority, current or pending, or, to its knowledge, threatened against it, or Project Co, and any of its officers or directors (in their capacity as such). No event has occurred or circumstance exists which could reasonably be expected to give rise to, or serve as a valid basis for, the commencement of any action, suit, proceeding, arbitration or investigation by or against it, any of its officers or directors (in their capacity as such). In the past three years, it has not been subject to any judgment, order or decree entered in any lawsuit or proceeding nor has it settled any claim prior to being sued or prosecuted or a judgment being given in respect of it; and
- (j) **(Net Settlement Amount information)** all of the information contained in any Accounts and Liabilities Certificate delivered under this Agreement is true, accurate and complete.

## 6.2 Representations and warranties by the Sellers in respect of the Option Securities

The Sellers each represent and warrant that:

- (a) **(title)** subject to the Permitted Securities Interests, it is the registered and beneficial owner of the Option Securities with good and valid title thereto, free and clear of all liens including pre-emptive rights, rights of first refusal or “put” or “call” rights created by statute, its articles or otherwise, and full power to grant the Equity Purchase Option and, if the option is exercised, to complete the sale and purchase of its Option Securities in the manner provided in this Agreement including, for the avoidance of doubt, by transferring legal and beneficial right and title to its Option Securities to the City or its nominee, as the case may be;
- (b) **(no other interest)** no person other than the Seller has any interest in or other right over its Option Securities including any Security Interest, option or right of pre-emption except:
  - (i) pursuant to the Permitted Security Interests; or
  - (ii) as otherwise agreed by the City in its absolute discretion;
- (c) **(entire issued share capital of Project Co)** its Option Securities constitute the entire issued and outstanding share capital of Project Co. Other than its Option Securities, there are no other class of shares, units or other interests in the nature of Equity in Project Co;
- (d) **(all calls satisfied)** all calls made in respect of the Option Securities have been satisfied;

- (e) **(fully paid Option Securities)** each of its Option Securities have been duly issued and are outstanding as fully paid and non-assessable;
- (f) **(no Encumbrance)** the Sellers will on Completion have good and marketable title to their respective Option Securities free from any Encumbrance. On Completion, no person will have a claim to be entitled to an Encumbrance affecting any Option Security;
- (g) **(no disposal, option)** the Sellers have not sold, transferred or otherwise disposed of, agreed to sell, transfer or dispose of or granted any option to purchase its respective Option Securities or any interest in its Option Securities (other than as contemplated in this Agreement or pursuant to the Permitted Securities Interests);
- (h) **(no agreement)** there is no agreement, arrangement or understanding, or issued security or financial product, which calls for the present or future issue of, or gives to any person the right to require the issue of, any share or unit in, or security of, or other form of Equity in Project Co; and
- (i) **(no convertible securities)** Project Co has not issued any security convertible into shares or units in Project Co (other than any security being transferred as part of the sale under this Agreement).

### 6.3 Reliance on representations and warranties

- (a) Each of the Sellers acknowledges that the City has executed this Agreement and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made in this clause 6 (*Sellers representations and warranties*) and the disclosures referred to in clause 6.3(d).
- (b) Each of the Sellers acknowledges that it has not relied and will not rely on any financial or other advice, representation, statement or promise provided or made by or on behalf of the City in deciding to enter into this Agreement or to exercise any right or perform any obligation under it.
- (c) The maximum aggregate liability of the Sellers to the City in relation to any Claim for breach of any representation or warranty given under clause 6.1(g), 6.1(i) or 6.1(j) shall be limited (in aggregate) to the Settlement Amount.
- (d) Notwithstanding any other provision of this Agreement, no reliance may be placed by the City on any warranty given pursuant to clauses 6.1(g), 6.1(i) and 6.1(j) and the Sellers shall not have any liability to the City for a breach of any warranty given pursuant to clauses 6.1(g), 6.1(i) and 6.1(j) if and to the extent that:
  - (i) the Sellers disclose relevant facts and circumstances to the City to demonstrate to the City's reasonable satisfaction that any of the warranties in clauses 6.1(g), 6.1(i) and 6.1(j), as the case may be, are not true and correct; and
  - (ii) the disclosure referred to in clause 6.3(d)(i) above is made prior to the final determination of the Settlement Amount following the valuation pursuant to Schedule 3, provided that the City may in that instance:

- (A) withdraw from the purchase, in which case no party will have any liability to the other parties as a consequence (other than in respect of any accrued liability arising out of a prior breach of this Agreement); or
- (B) proceed with the purchase on the basis that the valuation pursuant to Schedule 3 will be delayed or otherwise extended (if required) to take into account:
  - (01) the disclosed facts or circumstances which gave rise to the warranty in clauses 6.1(g), 6.1(i) and/or 6.1(j), as the case may be, being untrue and incorrect; and
  - (02) any other relevant facts of which the City is aware and which give rise to the warranty in clauses 6.1(g), 6.1(i) and/or 6.1(j), as the case may be, being untrue and incorrect.

Provided that if the disclosure occurs after the valuation pursuant to Schedule 3 and prior to the Settlement Date, the City may:

- (iii) withdraw from the purchase, in which case no party will have any liability to the other parties as a consequence (other than in respect of any accrued liability arising out of a prior breach of this Agreement); or
- (iv) defer the Settlement Date so as to seek a revised valuation to take into account:
  - (A) the disclosed facts or circumstances which gave rise to the warranty in clauses 6.1(g), 6.1(i) and/or 6.1(j), as the case may be, being untrue and incorrect; and
  - (B) any other relevant facts of which the City is aware and which give rise to the warranty in clauses 6.1(g), 6.1(i) and/or 6.1(j), as the case may be, being untrue and incorrect,

in which case the parties will reapply the process in Schedule 3 as if the date of the disclosure was the Equity Purchase Exercise Notice Date (and, to avoid doubt, the Sellers will not in that instance have any liability on account of the facts or circumstances which gave rise to the warranty in clauses 6.1(g), 6.1(i) and/or 6.1(j), as the case may be, being untrue or incorrect), to the extent of the disclosure under clauses 6.3(d).

## **7. SELLER UNDERTAKINGS**

### **7.1 Additional Equity Securities**

Project Co must not, and the Sellers must procure that Project Co does not, issue or grant any Additional Equity Securities, nor register a person as a holder of any such Additional Equity Security, unless the parties to this Agreement and that person have executed an agreement on terms which the City is satisfied are consistent with the terms of this Agreement and pursuant to which that person grants to the City the right to require that person to sell the Additional Equity Securities of that person to the City or its nominee (as the City may elect) without any change to the Settlement Amount.



## 7.2 Exercise of voting rights

From the Equity Purchase Exercise Notice Date until and including Completion (the **Equity Purchase Option Validity Period**), each Seller must not exercise any votes in respect of its Option Securities, and will procure that Sellers must not exercise any votes in respect of securities in Project Co, without the City's prior written consent (not to be unreasonably withheld or delayed in light of the best interests of the Sellers or Project Co).

## 7.3 Restraint on dealing

During the Equity Purchase Option Validity Period, each Seller must not, and will procure that Project Co must not, sell, transfer, assign, grant a security in respect of, allow a security interest to attach or otherwise deal with any legal or beneficial interest in, any Option Securities or, as the case may be, in respect of the securities of Project Co, other than a Permitted Security Interest or with the prior written consent of the City.

## 7.4 Other undertakings

- (a) During the Equity Purchase Option Validity Period, each Seller must procure that Project Co, does not, without the prior written consent of the City (not to be unreasonably withheld or delayed in light of the best interests of the Sellers or Project Co);
  - (i) sell, transfer, lease, license, assign or otherwise dispose of the whole or any part of its business, undertaking, property or assets;
  - (ii) carry on any activity other than the business of providing the Maintenance and Rehabilitation Services and the Works contemplated by the Project Agreement in the normal and proper course;
  - (iii) issue or allot or agree to issue or allot any shares or units in its capital or any securities or loan notes convertible into shares or units or grant or agree to grant options over or rights in any such shares or units, securities and loan notes;
  - (iv) create or issue any debenture, mortgage, charge or other security or increase the amount of any borrowings capable of being secured thereby;
  - (v) acquire or dispose of any share, debenture, mortgage, loan capital or security (or any interest therein) in any body corporate or trust;
  - (vi) make any loan other than credit given in the normal course of trading;
  - (vii) enter into any material contract or commitment or pay any management or other fee other than in the ordinary course of ordinary business on arm's length terms;
  - (viii) enter into any joint venture, partnership or profit sharing agreement with any other person;
  - (ix) sell, release, assign or factor the debts or securities of Project Co;

- (x) approve any transferee of any share or unit or other form of Equity in Project Co, other than any such transferee as is authorised by this Agreement;
  - (xi) do or permit or suffer to be done any act or thing whereby Project Co, may be wound up (whether voluntarily or compulsorily);
  - (xii) commence any litigation, mediation or arbitration or any other form of dispute resolution the costs of which are likely to exceed \$[REDACTED];
  - (xiii) compromise any claims, demands or proceedings for an amount in excess of \$[REDACTED] or take steps to do so;
  - (xiv) make any tax election or settle or compromise any income tax liability, unless that election, settlement or compromise is required by law and is supported by an opinion of counsel, or is in the ordinary course of business and is consistent with past practices;
  - (xv) terminate or permit the termination or amendment of, or fail to renew on its expiry, any insurance policy held by Project Co, as at the Equity Purchase Exercise Notice Date; or
  - (xvi) do or omit to do anything which might result in the variation, termination, suspension, revocation or non-renewal of any Authorization held by Project Co, which is material to the operation its business.
- (b) During the Equity Purchase Option Validity Period, each Seller must procure that:
- (i) no amendment or alteration is made to the constitutional documents of Project Co, without the City's prior written consent;
  - (ii) Project Co, does not purchase or cancel any of its own shares or units or make any repayment of, or reduction in, its share or unit capital or make any alteration to any of the rights attaching to any class of its share or unit capital, as applicable;
  - (iii) Project Co does not make any material change in the nature of its business;
  - (iv) Project Co, does not enter into any transaction that is not in the normal and proper course of conducting its business nor enter into any transaction which is not on arm's length terms.

## 8. ACCESS TO INFORMATION

Each of the Sellers must, and will procure that Project Co, must, at all times during the term of this Agreement upon reasonable notice from the City, provide the City and its representatives with;

- (a) access to such information (other than legally privileged information if such access would waive such privilege) as the City may reasonably request from time to time in order;
  - (i) to evaluate whether it wishes to exercise the Equity Purchase Option; and

- (ii) to verify any information provided under this Agreement (including in an Accounts and Liabilities Certificate);
- (b) full access to its personnel and premises; and
- (c) details of any facts or circumstances which affect the representations and warranties in clause 6.1 to 6.2 (both inclusive).

## **9. ANNOUNCEMENTS**

No press release or other public announcement with respect to this Agreement or any transaction contemplated therein is to be made by a party unless and until the text of the announcement and the time and manner of its release have been approved by the other party. However, if a party is bound by law to make a press release or other public announcement, such party may do so, notwithstanding the failure of the other party to approve same, provided (a) the other party is given at least three Business Days prior written notice of the intention to make such announcement and has a reasonable opportunity to comment on the announcement, and (b) the announcement merely relates the facts and then only to the extent necessary to satisfy the specific legal requirement

## **10. MISCELLANEOUS**

### **10.1 Notices**

Any notice, consent, waiver or other communication given under this Agreement must be in writing in the English language and shall be given by delivering it (personally or by nationally recognized courier) or sending it by facsimile or electronic mail addressed:

- (a) to the City at:

- 

- Attention: •
- Facsimile: •
- Email: •

with a copy (which does not constitute notice to the City) to:

Norton Rose Fulbright Canada LLP

- 

- Attention: •
- Facsimile: •
- Email: •

- (b) to the Seller at:

-

Attention: •  
Facsimile: •  
Email: •

with a copy (which does not constitute notice to the Seller) to:

[the Seller's counsel]

•

Attention: •  
Facsimile: •  
Email: •

(c) to the [\_\_\_\_\_] at:

•

Attention: •  
Facsimile: •  
Email: •

with a copy (which does not constitute notice to the [\_\_\_\_\_] ) to:

[the [\_\_\_\_\_] counsel]

•

Attention: •  
Facsimile: •  
Email: •

Any such communication is deemed to have been duly given (a) if delivered personally, on the day of delivery, (b) if sent by a nationally recognized courier service (delivery receipt requested) with charges paid by the sender, on the later of (i) the first Business Day following the date of dispatch, or (ii) the scheduled day of delivery by such service, (c) if sent by facsimile (with confirmation of transmission), on the day so sent if the day is a Business Day and the transmission was sent prior to 5 pm (Ottawa time) and otherwise on the next Business Day, and (d) if sent by electronic mail on the date so sent, if the day is a Business Day and the email was sent prior to 5 pm (Ottawa time) and otherwise on the next Business Day. In the case of electronic mail, receipt of each communication must be confirmed by the recipient by the end of the next Business Day or, if not so confirmed, must be followed by the dispatch of a copy of such communication pursuant to one of the other methods described above; provided however that such email notice shall be deemed to have been given on the date stipulated in (d) above. A Person may change its address for service by notice given in accordance with the foregoing and any subsequent communication must be sent to such Person at its changed address

## **10.2 Governing Law**

- (a) This Agreement is governed by and is to be interpreted, construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflict of law principles.
- (b) Each of the Parties irrevocably attorns and submits to the exclusive jurisdiction of the courts of Ontario in any action or proceeding arising out of or relating to this Agreement. Each of the Parties waives objection to the venue of any action or proceeding in such court or any argument that such court provides an inconvenient forum.

## **10.3 Amendments**

This Agreement may only be amended, supplemented or otherwise modified by written agreement each of the parties hereto.

## **10.4 Assignment**

- (a) This Agreement will become effective when executed by the Parties and thereafter will be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.
- (b) None of the Parties may, without the prior written consent of the other Parties, transfer, assign, or otherwise dispose of any of its rights, duties or obligations under this Agreement.

## **10.5 Waiver**

The failure or delay by a party in enforcing, or insisting upon strict performance of, any provision of this Agreement does not constitute a waiver of such provision or in any way affect the enforceability of this Agreement (or any of its provisions) or deprive a party of the right, at any time or from time to time, to enforce or insist upon strict performance of that provision or any other provision of this Agreement. Any waiver by a party of any provision of this Agreement is effective only if in writing and signed by a duly authorized representative of such party

## **10.6 Further Assurances**

From time to time after the Closing, each party will, at the request of the other party, execute and deliver such additional conveyances, transfers and other assurances and perform or cause to be performed such further and other acts or things as may be reasonably required to give effect to, and carry out the intent of, this Agreement.

## **10.7 Consents**

A consent required under this Agreement from the City may be given or withheld, or may be given subject to any conditions, in its absolute discretion, unless this Agreement expressly provides otherwise.

**10.8 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.
- (b) Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Agreement.

**10.9 Severability**

If any provision of this Agreement is determined by an arbitrator or a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions will continue in full force and effect, without amendment.

**10.10 Remedies cumulative**

The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law or any other agreement, except to the extent expressly provided in this Agreement.

**10.11 Entire agreement**

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, negotiations and discussions relating to the subject matter thereof, whether oral or written. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the parties relating to the subject matter hereof except as specifically set forth in this Agreement. Neither party has relied or is relying on any other information, discussions or understandings in entering into and completing the transactions contemplated in this Agreement.

**10.12 Counterparts**

This Agreement may be executed in any number of separate counterparts (including by facsimile or other electronic means) and all such signed counterparts will together constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a party may send a copy of its signature on the execution page hereof to the other parties by facsimile or other means of recorded electronic transmission (including in PDF form) and such transmission shall constitute valid delivery of an executed copy of this Agreement to the receiving party.

**10.13 Expenses**

Except as otherwise expressly provided in this Agreement, all costs and expenses (including the fees and disbursements of legal counsel, brokers, investment advisers, consultants and accountants) incurred in connection with this Agreement and the transactions contemplated herein are to be paid by the party incurring such expenses. If this Agreement is terminated, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a breach of this Agreement by the other party.

**10.14 Several Obligations**

If a party to this document is made up of more than one person, or a term is used in this document to refer to more than one party (for example, the Sellers), then unless otherwise specified in this document, the obligations and liabilities of those persons are several and any representations and warranties are given by that person for, or in respect of, itself but not for, or in respect of, any other entity.

*[Signature Page Follows]*

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

**CITY OF OTTAWA**

Per:

\_\_\_\_\_  
Name:

Title:

Per:

\_\_\_\_\_  
Name:

Title:

I/We have authority to bind the corporation.

**[Seller]**

Per:

\_\_\_\_\_  
Name:

Title:

Per:

\_\_\_\_\_  
Name:

Title:

I/We have authority to bind the corporation.



[●]

Per:

\_\_\_\_\_  
Name:

Title:

Per:

\_\_\_\_\_  
Name:

Title:

I/We have authority to bind the corporation.

**Schedule 1**  
**Equity Purchase Exercise Notice**

To: \_\_\_\_\_,

(together, the **Sellers**).

**Re: Equity Purchase Agreement, dated [insert] between \_\_\_ and \_\_\_ (the "EPA")**

We refer to the EPA. Unless otherwise defined or the context otherwise requires, capitalised terms used in this Equity Purchase Exercise Notice have the meanings given to them (including by incorporation) in the EPA.

We hereby give notice pursuant to clause 3.1 of the EPA that we exercise the Equity Purchase Option and require each of you to sell to us or our nominee your respective Option Securities for your Relevant Proportion of the Net Settlement Amount and otherwise in accordance with the EPA.

The Settlement Date is **[to be inserted by the City]**.

[Our appointed nominee for the purposes of this transaction is [to be inserted by the City]<sup>2</sup>

Other than as specifically contemplated under the EPA, this Equity Purchase Exercise Notice is irrevocable.

DATED [date]

\_\_\_\_\_

Officer:  
Name: (printed)

<sup>2</sup> Note to Proponents: to be deleted if not applicable

**Schedule 2**  
**Accounts and Liabilities Certificate**

To: The City of Ottawa

**Re: Equity Purchase Agreement, dated [insert] between \_\_\_ and \_\_\_ (the "EPA")**

We refer to the EPA. Unless otherwise defined or the context otherwise requires, capitalised terms used in this Equity Purchase Exercise Notice have the meanings given to them (including by incorporation) in the EPA.

This is an Accounts and Liabilities Certificate delivered under clause 5.2(a)(i) of the EPA. We hereby certify that:

(a) the Project Co Accounts and Receivables, as at the Settlement Date, are as set out below:

<u>Item</u>	<u>Amount (\$)</u>
Service Payment Receivable	[insert]
[All credit balances on any bank accounts held by or on behalf of Project Co]	[insert]
Miscellaneous Current Assets	[insert]

(b) the Project Co Liabilities, as at the Settlement Date, are as set out below:

<u>Item</u>	
O&M and SPV (incl Insurance) Costs Payable	[insert]
Lifecycle Payment Payable	[insert]
Miscellaneous Current Liabilities	[insert]

**DATED** [date]

**Signed for and on behalf of** \_\_\_\_\_

**Schedule 3**  
**Settlement Amount Calculation**

**1. Calculation of Settlement Amount**

- (a) The parties agree that the Settlement Amount will be the amount, as at the Equity Purchase Exercise Notice Date, calculated in accordance with paragraph 1(b) of this Schedule 3.
- (b) The Settlement Amount will be shall be an amount which, if paid on the Settlement Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Settlement Date and taking account of the actual timing of all such payments, but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Settlement Date, gives a nominal internal rate of return to the Settlement Date equal to the Base Case Equity IRR on the amount paid for the Equity Capital (to the extent that such Equity Capital has been applied by Project Co for the purposes of the Project) while taking into consideration the timing of such Equity Capital investment in the Project.
- (c) Not Used.
- (d) If the City exercises any of its rights under clause 6.3(d)(ii)(B) or 6.3(d)(iv), then the parties must take into account the relevant facts or circumstances contemplated under that clause (whether the relevant facts or circumstances relate to Project Co) in undertaking its valuation and will make appropriate adjustments (if any) to the determination of the Settlement Amount, including factoring in any contingent liability (other than any contingent tax liability) or risk evidenced by such facts or circumstances. The calculation of the Settlement Amount will individually allocate the valuation as against each Seller on the basis of each Seller's Relevant Proportion and any warranty disclosures by, or in respect of, each Seller.

**2. Not Used**

**3. Not Used**