

SCHEDULE 41

LENDERS' DIRECT AGREEMENT

THIS LENDERS' DIRECT AGREEMENT is made as of the 28th day of March, 2019.

BETWEEN:

THE CITY OF OTTAWA

(the "City")

AND:

[REDACTED]

(the "Lenders' Agent")

AND:

TRANSITNEXT GENERAL PARTNERSHIP [REDACTED]

("Project Co")

WHEREAS:

- A. City and Project Co have entered into the Project Agreement.
- B. Under the Lending Agreements, the Financing is to be provided to Project Co by the Lenders to partially finance the Works under the Project Agreement, conditional, among other things, on Project Co executing and delivering the Lending Agreements.
- C. The Lenders' Agent has agreed to enter into this Lenders' Direct Agreement with City and Project Co in relation to the Lending Agreements, the exercise of its rights under the Lending Agreements and the remedying of breaches by Project Co under the Project Agreement.
- D. With a view to ensuring that City is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with City throughout the duration of the Project Agreement.

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

1 DEFINITIONS AND INTERPRETATION

1.1 In this Lenders' Direct Agreement, all capitalized terms not otherwise defined in this Lenders' Direct Agreement shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:

- (a) **"Appointed Representative"** means any of the following to the extent so identified in an Appointed Representative Notice:
 - (i) the Lenders' Agent, any Lenders or any of their Affiliates;
 - (ii) a receiver or receiver and manager or any permutation thereof of Project Co appointed under the Security Documents;
 - (iii) a trustee in bankruptcy or court appointed receiver of Project Co;
 - (iv) an administrator of Project Co;
 - (v) a person directly or indirectly owned or controlled by the Lenders' Agent or any of the Lenders; or
 - (vi) any other person approved by City (such approval not to be unreasonably withheld or delayed).
- (b) **"Appointed Representative Notice"** has the meaning given in Section 8(b).
- (c) **"City Project Documents"** means the Project Agreement and all other documents to which both the City and Project Co are parties pursuant to or in connection with the Project Agreement.
- (d) **"Default Notice"** has the meaning given in Section 7(b)(i).
- (e) **"Enforcement Action"** means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (f) **"Enforcement Event"** means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (g) **"Exercise Date"** has the meaning given in Section 12(b).
- (h) **"Indebtedness Notice"** has the meaning given in Section 7(b)(ii).
- (i) **"Lender Representative"** means a representative (which may be the Lenders' Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (j) **"Lenders' Agent"** means [REDACTED] acting as agent for and on behalf of the Lenders.

- (k) “**Lenders’ Construction Contractor Direct Agreement**” means the direct agreement among the Lenders’ Agent, the Construction Contractor and Project Co.
- (l) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (m) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (n) “**Novation Date**” has the meaning given in Section 10(a).
- (o) “**Novation Notice**” has the meaning given in Section 10(a).
- (p) “**Party**” means the City, Project Co or the Lenders’ Agent, and “**Parties**” means collectively, the City, Project Co and the Lenders’ Agent.
- (q) “**Project Agreement**” means the project agreement made on or about March 28, 2019 between the City and Project Co.
- (r) “**Security**” means any security interests granted to the Lenders’ Agent pursuant to the Security Documents.
- (s) “**Security Documents**” means all security granted by Project Co to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
- (i) the Lenders’ CC Direct Agreement (as defined in the Lending Agreements);
 - (ii) general security agreement between Project Co, [REDACTED], and the Lenders’ Agent dated the date of the Project Agreement;
 - (iii) limited recourse guarantee and pledge between [REDACTED] and the Lenders’ Agent dated the date of the Project Agreement;
 - (iv) blocked account agreement – general, between Project Co, the Lenders’ Agent and [REDACTED] dated the date of the Project Agreement;
 - (v) blocked account agreement – springing, between Project Co, the Lenders’ Agent and [REDACTED], dated the date of the Project Agreement.
- (t) “**Step-In Date**” means the date on which the City receives a Step-In Notice from the Lenders’ Agent.
- (u) “**Step-In Notice**” means the notice given by the Lenders’ Agent to the City pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (v) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:

- (i) the Step-Out Date;
- (ii) the Termination Date (provided that the City has complied with its obligations in Section 7 of this Lenders' Direct Agreement);
- (iii) the date that a transfer of Project Co's rights and obligations under the City Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
- (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
 - (A) the date falling 180 days after the Longstop Date; or
 - (B) the date falling 2 years after the Step-In Date.
- (w) "**Step-Out Date**" means the date falling 30 days after the date on which the City receives a Step-Out Notice.
- (x) "**Step-Out Notice**" has the meaning given in Section 9(a).
- (y) "**Subsequent Indebtedness Notice**" has the meaning given in Section 7(c).
- (z) "**Suitable Substitute**" means a person, approved in writing by the City in accordance with Sections 10(b) and 10(c), which:
 - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the City Project Documents; and
 - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the City Project Documents.

2 INTERPRETATION

This Lenders' Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Lenders' Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders' Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders' Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders' Direct Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.

- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Lenders' Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Lenders' Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Lenders' Direct Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (h) In construing this Lenders' Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders' Direct Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Lenders' Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Lenders' Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Ottawa, Ontario.

- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Lenders’ Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3 CONFLICT OF DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Lenders’ Direct Agreement, the Project Agreement and the Construction Contractor’s Direct Agreement, the provisions of this Lenders’ Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

4 TERM

- (a) This Lenders’ Direct Agreement shall terminate automatically on the earliest of:
 - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
 - (ii) the Termination Date (provided that the City has complied with its obligations in Section 7); and
 - (iii) the date that any transfer of Project Co’s rights and obligations under the City Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within 30 days following its occurrence, the Lenders’ Agent shall provide notice to the City of the date referred to in Section 4(a)(i).

5 AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders’ Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3 of the Project Agreement.
- (b) Project Co shall not, prior to the Substantial Completion Date, exercise any rights of voluntary prepayment, voluntary redemption, or other voluntary repayment of loan, as applicable, under the Lending Agreements without the prior written consent of the City, acting in its sole discretion. In exercising its sole discretion to grant consent, the City shall be entitled to request and consider, and Project Co shall be required to provide within 10 Business Days following a request by the City, amongst other things and not limited to, the following:
 - (i) written certification by an officer of Project Co of the remaining Project Costs (as defined in the Lending Agreements) accrued and unpaid or expected to be incurred to achieve Substantial Completion and to fund any Project Accounts (as defined in the Lending Agreements) then not funded and required to be funded at or prior to the then anticipated prepayment and/or redemption (as approved by

- the SCTA (as defined in the Lending Agreements)) by the Substantial Completion Date;
- (ii) written certification by an officer of Project Co that no Funding Shortfall (as defined in the Lending Agreements) would reasonably be expected to arise as a consequence of such prepayment and/or redemption, including any related cancellation of unutilized commitments, if applicable, under the Lending Agreements;
 - (iii) written confirmation from the Lenders' Consultant, addressed to the City, that the Project Co's calculation in Section 5(b)(i) and Project Co's certification in Section 5(b)(ii) is, in the opinion of the Lenders' Consultant, correct;
 - (iv) written confirmation from the Lenders' Consultant, addressed to the City, that no incremental delay in achieving the any Substantial Completion Date (beyond the applicable Scheduled Substantial Completion Date) would reasonably be expected as a consequence of such prepayment and/or redemption and related cancellation of unutilized commitments, if applicable, under the Lending Agreements; and
 - (v) written confirmation from the Lenders' Consultant, addressed to the City, that the remaining Substantial Completion Dates are likely to occur on or prior to the then Scheduled Substantial Completion Dates.
- (c) Project Co and the City shall not amend or modify the City Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Lenders or Project Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(c) within 30 days following receipt thereof.
 - (d) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
 - (e) The Lenders' Agent acknowledges having received a copy of the Project Agreement.
 - (f) The City acknowledges having received copies of the Lending Agreements, and confirm that they are in form and substance satisfactory to the City as at the date of Financial Close.
 - (g) The City acknowledges notice of and consents to the Security, and confirm that they have not received notice of any other security interest granted over Project Co's rights under any of the City Project Documents.

- (h) Project Co and the Lenders' Agent hereby authorize and instruct the City (and the City agrees) to pay the Substantial Completion Payment and all sums payable to Project Co under the Project Agreement in respect of any Debt Amount or any Debt Service Amount to the construction payment account described below in this Section 5(h) maintained by Project Co at [REDACTED], and Project Co and the City agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, the City shall pay any sum which they are obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.

Construction Payment Account

SWIFT: [REDACTED]
Canadian Routing Code: [REDACTED]
Account No.: [REDACTED]
Beneficiary Name: [REDACTED]

The Parties acknowledge and agree that the RVSC Fixed Costs Amount will be paid by the City in accordance with Section 9.11 of the Project Agreement and shall not be deposited by the City in the Project Accounts (as defined in the Lending Agreements), either before or following a default or event of default under the Lending Agreements.

- (i) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, the City shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.
- (j) The Lenders' Agent shall cause the Lenders' Consultant to provide the City with a copy of any written assessment or report prepared by the Lenders' Consultant in relation to the status or progress of the Works under the Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent. The Lenders' Agent acknowledges and agrees that this Section 5(j) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, a copy of any and all of its written assessments and reports to the City.
- (k) The City agrees that any enforcement by the Lenders' Agent of a security interest in the Equity Capital of Project Co granted in favour of the Lenders' Agent as party of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default under the Project Agreement.
- (l) Any agreement provided to Project Co pursuant to Section 14.5(a) of the Project Agreement shall be in form and substance satisfactory to the Lenders' Agent, acting reasonably.

6 ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify the City of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or

any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.

- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
 - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 27 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
 - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities may compromise (i) the City's reputation or integrity, or (ii) the nature of the public transit system in the City of Ottawa so as to affect public confidence in the public transit system in the City of Ottawa or the Project.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7 TERMINATION OF PROJECT AGREEMENT BY THE CITY

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, the City may, at any time, serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d), the City shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
 - (i) the City promptly delivers written notice (a "**Default Notice**") to the Lenders' Agent setting out the Project Co Event of Default in reasonable detail;
 - (ii) not later than 30 days after the date of a Default Notice, the City delivers written notice (an "**Indebtedness Notice**") to the Lenders' Agent setting out:
 - (A) all amounts owed by Project Co to the City and any other existing liabilities and unperformed obligations of Project Co to the City of which the City is aware (having made reasonable enquiry), in each case, as of the date on which the City sent the Default Notice; and
 - (B) all amounts which will become owing by Project Co to the City and any other liabilities and obligations of Project Co to the City of which the City is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and

- (iii) the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- (c) At any time after the City sends an Indebtedness Notice but before the City receives a Step-In Notice, if the City discovers amounts that have become owing by Project Co to the City or any other liabilities or obligations of Project Co to the City that have come due but which were not included in the Indebtedness Notice, the City shall deliver written notice (a "**Subsequent Indebtedness Notice**") to the Lenders' Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, the City shall not terminate the Project Agreement on grounds:
 - (i) that the Lenders' Agent has served a Step-In Notice or enforced any Security Document; or
 - (ii) arising prior to the Step-In Date of which the City was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
 - (A) the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 180 days after the Longstop Date; or
 - (B) the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
 - (C) the grounds arose after the Substantial Completion Date, and neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:
 - (1) arose prior to the Step-In Date;
 - (2) is continuing and capable of being cured; and
 - (3) would have entitled the City to terminate the Project Agreement; or
 - (iii) arising solely in relation to Project Co.
- (e) The City shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
 - (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to the City on or before the Step-In Date;
 - (ii) if any amount referred to in Section 7(b)(ii)(B) has not been paid on or before the last day of the Notice Period;
 - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the date the later of:

- (A) the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; and
- (B) the Step-In Date; or
- (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement.

8 STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give the City a Step-In Notice at any time:
 - (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
 - (ii) during the Notice Period; or
 - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to the City of:
 - (i) its intention to deliver a Step-In Notice; and
 - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the City Project Documents.
- (d) During the Step-In Period, the City shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the City Project Documents. Project Co agrees to be bound by all such dealings between the City and the Appointed Representative to the same extent as if they had been between the City and Project Co.

9 STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to the City to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
 - (i) the rights and obligations of the Appointed Representative in relation to the City under the City Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;

- (ii) the City will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the City Project Documents; and
 - (iii) the Appointed Representative and the City shall be and hereby are released from all obligations and liabilities to one another under the City Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

10 NOVATION TO SUITABLE SUBSTITUTE

- (a) Subject to Section 10(b), at any time:
- (i) after an Enforcement Event has occurred;
 - (ii) during the Notice Period; or
 - (iii) during the Step-In Period,

the Lenders' Agent may deliver to the City and any Appointed Representative written notice (a "**Novation Notice**") that it wishes to transfer Project Co's rights and obligations under the City Project Documents to a proposed transferee, together with all information reasonably necessary for the City to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which the City receives the Novation Notice ("**Novation Date**") for the transfer of Project Co's rights and obligations under the City Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) The City shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. The City shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the City Project Documents is approved by the City as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by the City of the Novation Notice and the date of receipt of any additional information requested by the City. For greater certainty, if the City fails to respond within such period, the City shall be deemed not to have approved the proposed transferee.
- (c) The City shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for the City to withhold its approval if:
- (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to the City, acting reasonably, in respect of such breaches;
 - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or

- (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the City Project Documents or have the effect of increasing any liability of the City, whether actual or potential.
- (d) If the City withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to the City, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
 - (i) Project Co and the City will be released from their obligations under the City Project Documents to each other, and the Suitable Substitute and the City will assume those same obligations towards each other;
 - (ii) each of the rights of Project Co against the City under the City Project Documents and the rights of the City against Project Co under the City Project Documents will be cancelled, and the Suitable Substitute and the City will acquire those same rights against each other;
 - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
 - (A) an agreement between the City and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
 - (B) an agreement among the City, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
 - (iv) any subsisting ground for termination by the City of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11 TRANSFERS

The City shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

12 CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT

- (a) Notwithstanding any provision in the Construction Contractor's Direct Agreement, the City hereby undertake that it will not exercise any rights they may have under or arising out of any of the Construction Contractor's Direct Agreement, except as provided in Sections 12(b) to 12(f) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, the City shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Construction Contractor's Direct Agreement to step in to and/or novate the Construction Contract in accordance with the Construction Contractor's Direct Agreement.
- (c) Following the Exercise Date, the City shall not do anything to prejudice the rights which are not transferred to them pursuant to the Construction Contractor's Direct Agreement.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of the Construction Contract assumed or novated by the City pursuant to the Construction Contractor's Direct Agreement.
- (e) Notwithstanding the terms of the Construction Contractor's Direct Agreement and any other provisions of this Section 12, the Construction Contractor (and any guarantor thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Construction Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, the City shall not, prior to the date on which this Lenders' Direct Agreement terminates:
 - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Construction Contractor's Direct Agreement (and/or the Construction Contract) from the Construction Contractor;
 - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor; or
 - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

The City agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

13 NOTICE OF PROJECT CO DELAY OR PROCEEDING AT RISK

- (a) The Parties acknowledge that, if Project Co is Proceeding At Risk pursuant to Section 14.6(g) of the Project Agreement, the City may, in its sole discretion, give notice to the Lenders' Agent that Project Co is Proceeding At Risk, together with the relevant information supporting the City's opinion that Project Co is Proceeding At Risk.

14 ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 14.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 49.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to the City and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, the City and the Lenders' Agent, each acting reasonably. The City and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) The City may assign, transfer or otherwise dispose of the benefit of the whole or part of this Lenders' Direct Agreement to any person to whom the City assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 49.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of the City under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Project Co and the Lenders' Agent, each acting reasonably. Project Co and the Lenders' Agent shall, at the City's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and the City of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lenders' Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and the City on substantially the same terms as this Lenders' Direct Agreement and Project Co and the City shall enter into such new agreement with the assignee. Project Co and the City shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

15 NOTICES

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

If to the City:

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

Attention: [REDACTED]
Email: [REDACTED]

If to the Lenders' Agent:

[REDACTED]

Attention: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

If to Project Co:

TransitNEXT General Partnership
[REDACTED]

Email: [REDACTED]
Attn.: [REDACTED]

If to the Construction Guarantor:

[REDACTED]

Attention: [REDACTED]
Title: [REDACTED]
Email: [REDACTED]
With copy to: [REDACTED]

- (b) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 15(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.

- (c) Subject to Sections 15(d) and 15(e):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made by personal delivery in accordance with this Section 15.
- (e) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next following Business Day.

16 AMENDMENTS

This Lenders' Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Lenders' Direct Agreement.

17 WAIVER

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

18 RELATIONSHIP BETWEEN THE PARTIES

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

19 ENTIRE AGREEMENT

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

20 SEVERABILITY

Each provision of this Lenders' Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lenders' Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Lenders' Direct Agreement. If any such provision of this Lenders' Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Lenders' Direct Agreement as near as possible to its original intent and effect.

21 ENUREMENT

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

22 GOVERNING LAW AND JURISDICTION

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

23 DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 26 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

24 FURTHER ASSURANCE

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

25 LANGUAGE OF AGREEMENT

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

26 COUNTERPARTS

This Lenders' Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Lenders' Direct Agreement which was so faxed.

27 CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 42 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information (as defined in the Project Agreement) as is necessary for the Lenders' Agent to comply with Applicable Law.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

THE CITY OF OTTAWA

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

TRANSITNEXT GENERAL PARTNERSHIP

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.