

**PROJECT AGREEMENT  
(EXECUTION VERSION)**

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

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SCHEDULES

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

THIS PROJECT AGREEMENT is made as of the 28<sup>th</sup> day of March, 2019

BETWEEN:

**CITY OF OTTAWA**

(the “City”)

AND:

**TRANSITNEXT GENERAL PARTNERSHIP**

(“Project Co”)

**WHEREAS:**

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

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

- (k) Construction of the New Walkley Yard to be constructed west of Albion Road, across the street from the Existing Walkley Yard;
  - (l) Improved connectivity for pedestrians and cyclists parallel to the Existing Trillium and Trillium Line Extension and in the vicinity of stations, including construction of a new multi-use path (MUP) system;
  - (m) Extension of and upgrades to the Communications Systems and Signalling and Train Control Systems; and
  - (n) Provisions of a New Vehicle Fleet.
- B. Project Co will provide the Project Operations, which Project Operations include the elements set out in Recital A and (i) the design, construction, financing, maintenance and rehabilitation of the System Infrastructure and the New Municipal Infrastructure, (ii) the procurement, financing, maintenance and rehabilitation of the New Vehicle Fleet, and, (iii) the maintenance and rehabilitation of the Existing Vehicle Fleet (the “**Project**”).
- C. The City and Project Co wish to enter into this project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- D. With a view to ensuring that the Parties are able to properly and effectively discharge their respective duties, functions, and responsibilities under Applicable Law, it is the intent that the City and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

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

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions and Interpretation**

- (a) This Project Agreement shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement.

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Custody Agreement
Schedule 4	- Funding Requirements
Schedule 5	- Direct Agreements

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

- (c) The documents comprising this Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co's proposal which are incorporated by explicit reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close, the Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and

rendered null and void, and shall not be relied upon or used by Project Co, the City or anyone else (including anyone pursuant to Schedule 26 - Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Operations, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.

- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of the City, no consent, approval, opinion or satisfaction of the City or the City Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval, opinion or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.
- (g) The organization of the Output Specifications into divisions, sections and parts shall not control Project Co in dividing the Works or the Maintenance and Rehabilitation Services among the Project Co Parties or in establishing the extent of the Works or the Maintenance and Rehabilitation Services to be performed by a trade.

## **1.2 Conflict of Terms**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
  - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
  - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
  - (iii) the body of this Project Agreement;
  - (iv) Schedule 1 - Definitions and Interpretation;
  - (v) Schedule 32 - City Permits, Licences, Approvals and Authorizations;
  - (vi) Schedule 33 - Lands;
  - (vii) Schedule 26 - Dispute Resolution Procedure;
  - (viii) Schedule 20 - Construction Period Payments;
  - (ix) Schedule 19 - Payment Mechanism;
  - (x) Schedule 15 - Output Specifications;
  - (xi) Schedule 17 - Environmental Obligations;

- (xii) Schedule 24 - Insurance and Performance Security Requirements;
  - (xiii) Schedule 21 - Variation Procedure;
  - (xiv) Schedule 10 - Review Procedure;
  - (xv) Schedule 14 - Testing and Commissioning;
  - (xvi) Schedule 11 - Integrated Management System Requirements
  - (xvii) Schedule 27 - Refinancing;
  - (xviii) Schedule 22 - Compensation on Termination;
  - (xix) Schedule 25 - Record Provisions;
  - (xx) Schedule 23 - Expiry Transition Procedure;
  - (xxi) the other Schedules in the order in which they are listed in Section 1.1(b); and
  - (xxii) Schedule 13 - Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or the City, upon discovery of same, shall immediately give Notice to the City Representative. The City Representative shall, within 10 Business Days after such Notice, make a determination of which provision governs and give Notice of such determination, in writing, to Project Co.
- (d) The City and Project Co shall comply with the determination of the City Representative pursuant to this Section 1.2 unless Project Co disputes the decision of the City Representative in which event such Dispute may be referred for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.

### **1.3 Conflict of Documents**

- (a) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Lenders' Direct Agreement, the provisions of the Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency. Notwithstanding the foregoing, if there is any right or remedy in favour of the City set out in the Lenders' Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency.

### **1.4 Legal Requirements**

- (a) Whenever standards of Applicable Law differ (after giving effect to any applicable conflict of law rules), the most stringent standards shall govern.

## **1.5 Early Works Agreement and Enabling Works**

- (a) Upon achievement of Financial Close, this Project Agreement shall supersede and replace the early works agreement in respect of the Project executed by the Parties on or about March 7, 2019 (the “**Early Works Agreement**”). Without prejudice to the generality of the foregoing, any part of the Works performed by Project Co under and in accordance with the Early Works Agreement shall be treated as having been performed under and in accordance with this Project Agreement, and the City’s payment obligations related to that part of the Early Works will be those under this Project Agreement and not under this Early Works Agreement, and shall be accounted for and paid for as part of the Mobilization Credit in accordance with Schedule 20 – Construction Period Payments of the Project Agreement.
- (b) Upon achievement of Financial Close, Project Co shall assume responsibility for all Enabling Works, and all Enabling Works shall be deemed to be Works hereunder and treated as having been performed under the terms of the Project Agreement. The purchase order for Enabling Works shall be assigned to Project Co on Financial Close, and all amounts paid by the City under and in accordance with such purchase order shall be credited by Project Co to the City and set-off against the first Construction Period Payment(s) becoming payable by the City to Project Co hereunder.

## **2. COMMERCIAL CLOSE AND FINANCIAL CLOSE**

### **2.1 Effective Date**

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

### **2.2 Letter of Credit**

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

- (b) Project Co shall ensure that the Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.
- (c) If Project Co delivers one or more Letter(s) of Credit from one or more Letter of Credit Provider(s) in accordance with Section 9.1(2) of the Request for Proposals, Project Co acknowledges and agrees that:
  - (i) the City may draw upon any Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount in accordance with the terms of this Project Agreement;
  - (ii) the City may draw on any Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Provider's contribution to security;
  - (iii) the City may draw upon any Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Project Co Party; and
  - (iv) the provision of a Letter of Credit shall not in any way prejudice or adversely affect the rights of the City to draw on the Letter of Credit in accordance with this Project Agreement, including in a circumstance where the default giving rise to the City's right to draw on the Letter of Credit is not the result of any act or omission of the Letter of Credit Provider whose Letter of Credit is drawn upon.

### **2.3 Financial Close**

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to the City drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the date of Financial Close:
  - (i) Project Co shall deliver to the City the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
  - (ii) the City shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If Project Co fails to deliver to the City any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the date of Financial Close (other than as a direct result of a breach by the City of its obligations under Section 2.3(b)(ii)) and the City does not waive such requirement, the City will be entitled to draw on the Letter of Credit to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written Notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by the City as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not the City incurs or mitigates its damages, and that the City shall not have any obligation to mitigate any such damages.

- (d) If the City fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the date of Financial Close (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Letter of Credit and to terminate this Project Agreement in its entirety by written Notice having immediate effect.

## **2.4 Disruption in Financial Markets**

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Letter of Credit pursuant to Section 2.2(b), the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, the City may in its sole discretion either:
- (i) terminate this Project Agreement in its entirety by written Notice having immediate effect; or
  - (ii) direct Project Co to assign to a designee of the City which has agreed to assume:
    - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Authorizations; and
    - (B) those contracts between Project Co and any Project Co Party which the City elects to be assigned.
- (c) If the City exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Section 2.4(b)(ii)(A) and (B), Project Co will be entitled to the return of its Letter of Credit and to payment of an amount equal to the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals plus [REDACTED]% of the Design and Bid Fee, plus any applicable HST. The City's obligation to return the Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the City, that such fee represents full and final satisfaction of any obligation or liability of the City to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

## **3. SCOPE OF AGREEMENT**

### **3.1 Scope of Agreement**

- (a) Project Co shall undertake the Project and perform the Project Operations in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to the City, except as otherwise provided in this Project Agreement.

#### 4. BUSINESS OPPORTUNITIES, ADVERTISING AND PUBLIC EVENTS

##### 4.1 Business Opportunities

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

## 5. REPRESENTATIONS AND WARRANTIES

### 5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to the City that as of Commercial Close:
- (i) Project Co is [REDACTED] formed and validly existing under the laws of the Province of Ontario and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder:
    - (A) [REDACTED] under the laws of Canada, is in good standing with Corporations Canada with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted and to enter into this Project Agreement and to duly observe and perform its obligations hereunder in its capacity as a partner of Project Co;
    - (B) [REDACTED] under the laws of Canada, is in good standing with Corporations Canada with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted and to enter into this Project Agreement and to duly observe and perform its obligations hereunder in its capacity as a partner of Project Co;
  - (ii) all partnership interests in Project Co as of Commercial Close have been disclosed to the City;
  - (iii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction, maintenance and rehabilitation of light rail transit projects, including the maintenance of light rail vehicles, similar to the Project in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
  - (iv) Project Co, and [REDACTED] in its capacity as partner of Project Co have the requisite power, authority and capacity to execute, deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed by Project Co or [REDACTED] in its capacity as partner of Project Co;
  - (v) no steps or proceedings have been taken or are pending to supersede or amend:
    - (A) the constating or formation documents of Project Co, including the partnership agreement governing Project Co; or
    - (B) the constating documents, articles or by-laws of [REDACTED],

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

- (vi) this Project Agreement has been duly authorized, executed, and delivered by Project Co and by [REDACTED] in its capacity as partner of Project Co and constitutes a legal, valid, and binding obligation of Project Co, [REDACTED] enforceable against each of them in accordance with its terms, subject only to:
  - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vii) the execution, delivery, and performance by Project Co, and by [REDACTED] in its capacity as partner of Project Co, of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
  - (A) its constating, formation or organizational documents, including any by-laws or partnership agreements;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) no Project Co Event of Default has occurred and is continuing;
- (ix) all of the information regarding [REDACTED] set out in Schedule 29 - Project Co Information is true and correct in all material respects;
- (x) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co, [REDACTED] or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (xi) Project Co has conducted its own investigations and has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of the City and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Maintenance and Rehabilitation Services in accordance with this Project Agreement in a

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

- (xii) Project Co, and [REDACTED] in its capacity as partner of Project Co, is able to meet its obligations as they generally become due;
- (xiii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada);
- (xiv) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xv) each of Project Co, [REDACTED] is not a Non-Resident;
- (xvi) no Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project;
- (xvii) to the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project;
- (xviii) either:
  - (A) the COR-Certified Construction Project Co Party is in possession of its COR Certification in good standing as required under this Project Agreement and has the ability to maintain such COR Certification in good standing at all times during the performance of the Works in accordance with its terms, provisions and conditions; or
  - (B) the COR-Qualified Construction Project Co Party:
    - (I) is in possession of its OHSAS 18001 Accreditation which remains in good standing and has the ability to maintain such OHSAS 18001 Accreditation in good standing at all times during the performance of the Works until such COR-Qualified Construction Project Co Party receives its COR Certification as required under this Project Agreement: and
    - (II) has made an application to the IHSA for its COR Certification as required under this Project Agreement (or has made an application to IHSA for its Health and Safety Certificate as required under this Project Agreement) and has the ability to maintain such Health and Safety Certification until the Final Completion Date in accordance with its terms, provisions and conditions.

## **5.2 Representations and Warranties of the City**

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

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

- (ii) the City is a municipal corporation duly and validly constituted and subsisting under the laws of the Province of Ontario and has full power and capacity to execute and deliver this Project Agreement and carry out the transactions contemplated by and duly observe and perform all of its obligations contained in this Project Agreement and all documents, instruments and agreements required to be executed and delivered by the City pursuant to this Project Agreement;
- (iii) the execution, delivery, and performance by the City of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
  - (A) any Applicable Law (including, for greater certainty, the *City of Ottawa Act 1999* (Ontario) and any by-laws issued in accordance therewith; or
  - (B) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected;
- (iv) the City has obtained all consents and approvals required for the execution by the City of, and performance of its obligations under this Project Agreement;
- (v) other than any proceeding under the *Expropriations Act*, (Ontario) which could delay the acquisition by the City of the Lands therein, there are no current and, to the knowledge of the City, there are no pending or threatened actions, claims, demands, lawsuits, assessments, arbitrations, judgments, awards, decrees, orders, injunctions, prosecutions, or other proceedings of, by, against, or relating to, the City which, individually or in the aggregate, could have a material adverse effect on the Project or the ability of the City to perform its obligations under this Project Agreement and the City does not Have Knowledge of any basis for any such action, claim, demand, lawsuit, assessment, arbitration, judgment, award, decree, order, injunction, prosecution or other proceeding;
- (vi) the City has (or, in the case of the Additional Property Interests, will have) acquired the Lands and Additional Property Interests sufficient to enable to City to grant or to cause to be granted to Project Co the license rights contemplated in Section 14.2;
- (vii) the Project is permitted by the existing official plan, zoning and other land use restrictions applicable to the City and the Project; and
- (viii) the City is able to meet its obligations as they generally become due.

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

## **6. BACKGROUND INFORMATION**

### **6.1 No Liability**

- (a) Except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3, 16.4 and 16.5 neither the City nor any other City Party shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from the City or any other City Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

### **6.2 No Warranty**

- (a) Except as expressly provided in this Project Agreement, including Sections 6.4, 16.1, 16.2, 16.3, 16.4 and 16.5:
  - (i) neither the City nor any other City Party gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither the City nor any other City Party warrants that the Background Information represents all of the information in its possession or control (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
  - (ii) neither the City nor any other City Party shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
    - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
    - (B) to review or update the Background Information; or
    - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

### **6.3 No Claims**

- (a) Project Co acknowledges and confirms that:

- (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
- (ii) except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3, 16.4 and 16.5, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against the City or any City Party (whether in contract, tort or otherwise), including any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
  - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
  - (B) that the Background Information was incorrect or insufficient,nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such grounds.

#### **6.4 Technical Reports**

- (a) The City agrees that, if as of Commercial Close, except as disclosed in any Background Information or as otherwise disclosed by the City or any City Party, or known by Project Co or any Project Co Party, in each case prior to the date that is 30 days prior to the RFP Technical Submission Deadline, any of the information in the Technical Reports is, to the actual knowledge of the City, incorrect or there is relevant information in the possession or control of the City that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, such incorrect information shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.
- (b) For the purposes of Section 6.4(a), "to the actual knowledge of the City" means to the actual knowledge of the City Project Manager.

### **7. PROJECT DOCUMENTS**

#### **7.1 Project Documents**

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same. In the event that Project Co receives a notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such notice of default to the City.

#### **7.2 Ancillary Documents**

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 31.3, 43.5, 57.3 and 58.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
  - (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of the City, whether actual or potential;
  - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of the City, whether actual or potential; or
  - (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

without the prior written consent of the City, provided that, where consent is requested pursuant to Section 7.2(a)(i) or 7.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 7.2(a)(i) or 7.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of the City, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 7.2(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Project Co Parties, including Section 57.3.

### **7.3 Changes to Lending Agreements and Refinancing**

- (a) Subject to the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if at the time such action is contemplated and effected, it would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing the liability of the City whether actual or potential, unless such action is a Permitted Borrowing or a Refinancing effected in accordance with the provisions of Schedule 27 – Refinancing.

### **7.4 Compliance with Lending Agreements**

- (a) Project Co shall keep the Lending Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and the Project Documents, and shall ensure that none of the terms and conditions of the Lending Agreements shall prevent Project Co from performing its obligations under this Project Agreement or the Project Documents.

## **8. CITY RESPONSIBILITIES**

### **8.1 General**

- (a) The City shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
  - (ii) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that the City shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement;
  - (iii) acquire and give access to the Lands described in Schedule 33 – Lands, as amended from time to time, in accordance with the Commencement Dates and duration specified in the said Schedule;
  - (iv) make such payments to Project Co as are specifically provided for in this Project Agreement; and
  - (v) perform those additional obligations specifically provided for in this Project Agreement.
- (b) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of the City or any other counselor, officer, employee or official thereof in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude the City from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Project Co further agrees that, subject to Section 37.1(b), it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of the City from time to time.
- (c) The City shall, and shall cause all the City Parties to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (d) [Intentionally deleted].
- (e) The City shall provide for the attendance of the requisite number of suitably qualified employees for the employee training to be provided by Project Co in accordance with the requirements of Schedule 15-2 – Design and Construction Requirements.
- (f) The City shall provide suitably qualified drivers and controllers to support the required commissioning activities in accordance with the requirements of this Project Agreement.

### **8.2 City Permits, Licences, Approvals and Authorizations**

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

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

- (ii) comply with all City Permits, Licences, Approvals and Authorizations, in accordance with their terms, and other Permits, Licences, Approvals and Authorizations to the extent obligations thereunder attributable to the City are not otherwise required be undertaken or assumed by Project Co hereunder; and
  - (iii) execute all documents which, under Applicable Law, only the City as a land owner or as a counterparty to a Third Party Access Agreement is entitled to execute and which are required to obtain, maintain or renew any City Permits, Licences, Approvals and Authorizations.
- (b) The City shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as the City may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable Project Co or any Project Co Party to obtain, maintain or renew any Project Co Permits, Licences, Approvals and Authorizations or to demonstrate compliance with any Permits, Licences, Approvals and Authorizations, provided that the City shall not be responsible for obtaining or for any delay in obtaining or for the failure of Project Co or any Project Co Party to obtain any Project Co Permits, Licences, Approvals and Authorizations, unless such delay or failure is caused by any act or omission of the City, any City Party or any other person for whom the City is responsible at law. For greater certainty, the City shall not be obligated to:
- (i) exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permits, Licences, Approvals and Authorizations; and
  - (ii) automatically grant Project Co Permits, Licences, Approvals and Authorizations for which it is the authorizing entity and will apply its usual procedures and criteria in considering applications from Project Co or any Project Co Party for such Project Co Permits, Licences, Approvals and Authorizations.
- (c) Notwithstanding the provisions of Section 9.4(a)(i), the City shall be responsible for all designations, assumptions, road closures, transfers and any other applicable requirements relating to the System which can only be effected by the City pursuant to the *Municipal Act, 2001* (Ontario), subject to receipt by the City of any required consent(s) from the Crown in right of Canada and subject to Project Co having, at its own cost, providing or causing to be provided such information, documentation, and technical or administrative assistance, as the City may request and as Project Co may reasonably be able to provide to enable the City to effect such requirements.

## **9. PROJECT CO RESPONSIBILITIES**

### **9.1 Other Business**

- (a) Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project without the prior written consent of the City, in its sole discretion.

**9.2 General**

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

- (viii) coordinate with the City all Construction Activities relating to New Municipal Infrastructure forming part of the Works on those parts of the Lands affected by Third Party Access Agreements, including the provision of the Works Schedule, Progress Works Schedule and any updates to the Works Schedule or Progress Works Schedule relating to such New Municipal Infrastructure, so as to minimize, to the extent reasonably possible, the impact of Construction Activities on the City operations and services provided by the City to the public; and
- (ix) immediately notify the City upon the receipt or notice of (and provide the City with copies of any correspondence received in relation to), any incident report, investigation report or similar correspondence (in each case, whether in draft or final form) issued by the Ministry of Labour or any other Governmental Authority in respect of the Project Operations.

### **9.3 Project Co Parties**

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

### **9.4 Project Co Permits, Licences, Approvals and Authorizations**

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

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

- (C) the preparation and delivery of such other plans, specifications, agreements, documents and instruments in respect of the Design and Construction Works and/or the Maintenance Services and amendments thereto that are reasonably necessary to obtain the NCC FLUDA; and
  - (D) Project Co shall make changes to the Design Data as required by NCC to further assist the City in obtaining the NCC FLUDA and Project Co shall take such other actions as may be reasonably directed by the City from time to time with respect thereto; and
- (iii) if, following Commercial Close:
- (A) NCC requires a change to the Design Data or any other additional obligation to be assumed in respect of the NCC FLUDA pursuant to Section 9.4(a); and
  - (B) the City, in a timely manner, requires Project Co to make such change or to assume such additional obligation,

provided the change or other obligation is not otherwise a responsibility or obligation of Project Co under this Project Agreement, then such change or obligation shall result in a Variation subject to and in accordance with Schedule 21 – Variation Procedure.

- (f) If, prior to the Scheduled Substantial Completion Date, the City fails to issue to Project Co a final determination (a granting, conditional granting, or refusal) in respect of a Listed Project Co PLAA prior to the expiration of **[REDACTED]** per cent of the number of Business Days (rounding up to Business Days if such calculation results in a certain number of Business Days plus a fraction of a Business Day) designated for a final determination by the City in Appendix A to Schedule 32 – Permits, Licences, Approvals and Authorizations for the applicable Listed Project Co PLAA (the “**City PLAA Deadline**”), then any delay in the Works or additional costs in respect of the Works caused by the failure to make a final determination by the City PLAA Deadline shall, subject to and in accordance with Section 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event, provided that:
- (i) the applicable Project Co Permit, Licence, Approval or Agreement is a Listed Project Co PLAA;
  - (ii) Project Co has fulfilled all obligations pursuant to Applicable Law, in accordance with any deadline applicable to the Listed Project Co PLAA imposed by this Project Agreement or the City, including providing timely and thorough responses to questions or concerns posed by the City in respect of the Listed Project Co PLAA;
  - (iii) Project Co submitted the applicable Listed Project Co PLAA in accordance with the timing for such submission in the Works Schedule or Recovery Schedule, as applicable (in each case, as such submission date may be extended on account of any Delay Event); and
  - (iv) Project Co’s application for the Listed Project Co PLAA and Project Co’s responses to all questions or concerns posed by the City were in accordance with Good Industry Practice.

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

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

## **9.5 Safety and Security**

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

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

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

## 9.6 Health and Safety Certification

- (a) Project Co shall, at its own cost and risk, at all times during the performance of the Works cause a COR-Qualified Construction Project Co Party or COR-Certified Construction Project Co Party, as the case may be, to:
- (i) to the extent a COR-Qualified Construction Project Co Party has not obtained COR Certification prior to Financial Close,
    - (A) use best efforts to obtain its COR Certification no later than eighteen months following Financial Close. In the event that the City is satisfied, in its sole discretion, that the COR-Qualified Construction Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 9.6 and the COR-Qualified Construction Project Co Party has not obtained COR Certification by the end of such eighteen month period, then the City shall establish a time period during which the COR-Qualified Construction Project Co Party shall obtain its COR Certification, which time period shall not be less than 30 days, and
    - (B) maintain in good standing and, as applicable, renew its ISO 45001 Accreditation or OHSAS 18001 Accreditation until such time as the COR-Qualified Construction Project Co Party has obtained its COR Certification,
  - (ii) once the COR-Qualified Construction Project Co Party is certified (thereafter referred to as a “**COR-Certified Construction Project Co Party**”), maintain in good standing, and as applicable, renew its COR Certification; and
  - (iii) comply with all requirements of its ISO 45001 Accreditation or OHSAS 18001 Accreditation (if a COR-Qualified Construction Project Co Party) or COR Certification (if a COR-Certified Construction Project Co Party), in accordance with its terms.
- (b) Project Co shall, at its own cost and risk, at all times beginning on the date the Substantial Completion Countdown Notice is issued until the end of the Project Term cause the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party or ISO 45001 Accredited Maintenance and Rehabilitation Project Co Party to:
- (i) to the extent a ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party has not obtained its ISO 45001 Accreditation prior to the date the Substantial Completion Countdown Notice is issued, use best efforts to obtain its ISO 45001 Accreditation no later than twelve months following the date the Substantial Completion Countdown Notice is issued. In the event that the City is satisfied, in their sole discretion, that the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party has used best efforts to obtain its ISO 45001 Accreditation in accordance with this Section 9.6 and the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party has not obtained its ISO 45001 Accreditation by the end of such twelve month period, then the City shall establish a time period during which the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party shall obtain its ISO 45001 Accreditation, which time period shall not be less than six months;

- (ii) once the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party is accredited (thereafter referred to as a “**ISO 45001 Accredited Maintenance and Rehabilitation Project Co Party**”), maintain in good standing, and, as applicable, renew its ISO 45001 Accreditation; and
  - (iii) comply with all requirements of its ISO 45001 Accreditation in accordance with its terms.
- (c) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Project Operations:
- (i) a COR-Qualified Construction Project Co Party or a ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party fails to obtain its COR Certification or ISO 45001 Accreditation in accordance with this Project Agreement and the City determines that the failure to obtain the COR Certification or ISO 45001 Accreditation is as a result of such COR-Qualified Construction Project Co Party or such ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party, as the case may be, not using best efforts to obtain such certification or accreditation and the City delivers a Notice to Project Co indicating that a COR-Qualified Construction Project Co Party or a ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party, as the case may be, has failed to obtain its COR Certification or ISO 45001 Accreditation in accordance with this Project Agreement; or
  - (ii) a COR-Qualified Construction Project Co Party fails to maintain its ISO 45001 Accreditation or OHSAS 18001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
  - (iii) a COR-Certified Construction Project Co Party or an ISO 45001 Accredited Maintenance and Rehabilitation Project Co Party, as the case may be, fails to maintain its COR Certification or its ISO 45001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement;
- (each, an “**H&S Certification Default Event**”); or
- (iv) the City delivers a Notice to Project Co indicating that the City has reasonable cause to believe that a COR-Qualified Construction Project Co Party will fail to maintain its ISO 45001 Accreditation or OHSAS 18001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
  - (v) the City delivers a Notice to Project Co indicating that the City has reasonable cause to believe that a COR-Certified Construction Project Co Party or ISO 45001 Accredited Maintenance and Rehabilitation Project Co Party, as the case may be, will fail to maintain its COR Certification or ISO 45001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement,

Project Co shall:

- (vi) immediately upon the occurrence of a H&S Certification Default Event, notify the City that a H&S Certification Default Event has occurred, and:
  - (A) produce and deliver to the City a report identifying the reasons for the failure to obtain or maintain in good standing the COR Certification, ISO 45001 Accreditation or OHSAS 18001 Accreditation, as the case may be;
  - (B) produce and deliver to the City a plan showing the steps that are to be taken to have the COR Certification or ISO 45001 Accreditation or OHSAS 18001 Accreditation, as the case may be, obtained or reinstated in good standing within a period of not more than 90 days (the “**H&S Certification Reinstatement Plan**”), which H&S Certification Reinstatement Plan shall be subject to review and approval by the City and, to the extent the City requires any amendments or revisions to be made to the H&S Certification Reinstatement Plan, Project Co shall take, and shall cause the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party, or the ISO 45001 Accredited Maintenance and Rehabilitation Project Co Party, as the case may be, to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to the City an amended H&S Certification Reinstatement Plan not more than 5 Business Days from the date on which such request is made by the City;
  - (C) no later than 5 Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection or H&S Maintenance Inspection, as the case may be, in accordance with Section 13(b); and
  - (D) arrange to have conducted an H&S Construction Re-Inspection or H&S Maintenance Re-Inspection, as the case may be in accordance with Section 13(d), if required, or
- (vii) within 10 Business Days of receipt of the Notice from the City under 9.6(c)(iv) or 9.6(c)(v):
  - (A) produce and deliver to the City Representative a report identifying the manner in which the COR Certification or ISO 45001 Accreditation or OHSAS 18001 Accreditation, as the case may be, shall be maintained in good standing or obtained, as applicable;
  - (B) produce and deliver to the City Representative a plan showing the steps that are to be taken to ensure that the COR Certification or ISO 45001 Accreditation or OHSAS 18001 Accreditation, as the case may be, will be maintained in good standing without interruption (the “**H&S Certification Maintenance Plan**”), which H&S Certification Maintenance Plan shall be subject to review and approval by the City and, to the extent the City require any amendments or

revisions to be made to the H&S Certification Maintenance Plan, Project Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to the City an amended H&S Certification Maintenance Plan not more than 10 Business Days from the date on which such request is made by the City;

- (C) arrange to have conducted a complete H&S Construction Inspection or H&S Maintenance Inspection, as the case may be, in accordance with Section 13(b); and
- (D) arrange to have conducted an H&S Construction Re-Inspection or H&S Maintenance Re-Inspection, as the case may be, in accordance with Section 13(e)(ii), if required.

## **9.7 Protest and Trespass**

- (a) Except as otherwise provided in this Project Agreement, the City shall not be responsible for the presence of any persons participating in civil disobedience, demonstration or protest action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Lands (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Lands shall not be a breach of the obligation of the City to grant license rights of use and access to Project Co on and over the Lands pursuant to Section 14 nor a breach of any other obligation, representation or warranty under this Project Agreement.
- (b) Except as set out in this Project Agreement, throughout the Construction Period, the management of any Protesters or Trespassers shall be the responsibility of Project Co in respect of the Site, to the extent such management is not otherwise the responsibility of the Police Service.
- (c) During the Maintenance Period, if Protesters or Trespassers occupy the System or access to the System is prevented or interfered with by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to assist the City in managing such Protesters or Trespassers and promptly notify the City Representative of such occurrence. For clarity, during the Maintenance Period, Project Co shall be responsible for the management of any Protesters or Trespassers on the New Walkley Yard to the extent such management is not otherwise the responsibility of the Police Service.
- (d) Project Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Site, and/or the New Walkley Yard, provided that if Project Co does elect to exercise any such legal remedy, Project Co shall give the City Representative at least 24 hours' Notice prior to commencing any such legal proceeding (except in a case of Emergency, danger to persons or material destruction or material damage to property where, in such circumstances, such Notice may be given to the City less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the City Representative as to the status of any such legal proceeding in reasonable detail and at reasonable intervals, and provided further that:
  - (i) Project Co shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the

manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers; and

- (ii) Project Co shall not by virtue of this Section 9.7(d) be prevented from entering into bona fide settlements of claims brought against it by Protesters or Trespassers which provide for reasonable payments in satisfaction of such claims or agreeing to any reasonable cost orders in any proceedings.
- (e) Project Co may request the assistance of the City (at the cost of Project Co) to remove Protesters or Trespassers during the periods, and for the Site, facilities or infrastructure set out in Section 9.7(b) if Project Co demonstrates to the City's reasonable satisfaction that:
- (i) Project Co is pursuing legal remedies available to it to remove the Protesters or Trespassers (provided that for this purpose Project Co may, but shall not be obligated to, prosecute injunctive or other judicial remedies beyond the court of first instance); and
  - (ii) the continued presence of the Protesters or Trespassers is having a material adverse effect on the conduct of the Works or the Maintenance and Rehabilitation Services (as the case may be) that Project Co is unable to mitigate.

Following such request, the City shall notify Project Co whether the City can lawfully provide any assistance in relation to the removal of the Protesters or Trespassers that is not independently available to Project Co and, to the extent that such assistance can be lawfully provided, the City shall provide such assistance (at the cost of Project Co) to the extent it is, in the discretion of the City, reasonable and appropriate in the circumstances to do so.

## **9.8 Additional Works and Third Party Works**

- (a) Project Co shall, having regard to Project Co's obligations set out in Section 15, arrange and carry out all coordination of the Project Operations with the Third Party Works directly with the applicable Third Party Contractor.
- (b) The City may, in its sole discretion, carry out Additional Works.
- (c) The City may assign the methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the safety training in respect of the Additional Works to Project Co. For clarity, the City may, in its sole discretion, assign such responsibilities to Project Co during either or both of the Construction Period or Maintenance Period.
- (d) In connection with the Additional Works, the City shall,
  - (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with,
    - (A) the Works during the Construction Period; and
    - (B) the Maintenance and Rehabilitation Services during the Maintenance Period;

- (ii) enter into separate contracts with Additional Contractors,
  - (A) under conditions of contract which are compatible with the conditions of this Project Agreement;
  - (B) that require Additional Contractors to comply with Section 9.8(e) and all directions of Project Co in respect of any matter regarding health and safety on the Site, and methods and manner of construction (where applicable); and
  - (C) that require Additional Contractors to comply with Project Co's coordination and scheduling of the Additional Works; and
- (iii) ensure that insurance coverage is provided by each Additional Contractor as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co and in any event, such insurance shall provide for liability insurance of not less than \$[REDACTED].
- (e) In connection with the Additional Works, if the City has assigned responsibilities to Project Co pursuant to this Section 9.8, Project Co shall,
  - (i) provide for the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works or Maintenance and Rehabilitation Services, as applicable, to be performed under this Project Agreement;
  - (ii) assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety at the Site, including all the responsibilities of the 'constructor' under the *Occupational Health and Safety Act* (Ontario), prior to Substantial Completion and, exercised in a manner consistent with the said Act, at any time that Project Co is acting as a 'constructor' on the Site following Substantial Completion;
  - (iii) provide Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works, as applicable;
  - (iv) participate with the City and Additional Contractors in reviewing the construction schedules of Additional Contractors, when directed to do so by the City; and
  - (v) if part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly report to the City in writing and prior to proceeding with that part of the Works any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against the City by reason of such readily apparent deficiencies.
- (f) In the case of Additional Works carried out prior to Substantial Completion, if:
  - (i) any Additional Contractors cause any damage to the Works;

- (ii) Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Contractors not complying with the coordination, scheduling and safety instructions of Project Co; or
- (iii) subject to the performance by Project Co of its obligations under this Section 9.8, if Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any such Additional Works,

then any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 38 be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event.

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

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

- (v) If the City has, under Section 9.8(h)(iii), given Notice to Project Co that it does not agree that a Variation is required, the City shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 21 - Variation Procedure shall apply except that:
  - (A) the City shall not be entitled to withdraw any such Variation Enquiry unless the City determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void or will not result in any material negative consequence on Project Co's ability to perform any of the Project Operations and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
  - (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (i) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors on and to the Works performed by Project Co shall not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.

## **9.9 Adjacent Developments**

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

**9.10 System Extension**

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

**9.11 Revenue Vehicle Supply Contract**

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

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

**10. REPRESENTATIVES**

### **10.1 The City Representative**

- (a) Subject to the limitations set out in Section 10.1(d), the City Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the City Representative and such other functions and powers of the City under this Project Agreement as the City may notify Project Co from time to time.
- (b) The City may, from time to time by written Notice to Project Co, change the City Representative. Such change shall have effect on the later of the date of delivery of such Notice and the date specified in such Notice.
- (c) During any period when no City Representative has been appointed, or when the City Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the City Representative's functions under this Project Agreement, the City shall perform or may, by written Notice to Project Co, promptly appoint an alternative City Representative to perform the functions which would otherwise be performed by the City Representative. Upon receipt of such written Notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative City Representative which is permitted by this Project Agreement as being authorized by the City, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The City Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the City Representative which is explicitly authorized by this Project Agreement as being authorized by the City, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

### **10.2 The Project Co Representative**

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of the City.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written Notice to the City, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek the City's consent in accordance with Section 10.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written Notice, the City and the City Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and the City and the City Representative shall not be required to determine whether authority has in fact been given.

- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 10.2(d), unless otherwise notified in writing, the City and the City Representative shall be entitled to treat any act of the Project Co Representative which is explicitly authorized by this Project Agreement as being authorized by Project Co, and the City and the City Representative shall not be required to determine whether authority has in fact been given.

### **10.3 Communications to Representatives**

- (a) At the time that a Party appoints or changes the appointment of the City Representative or the Project Co Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute Notices to the Party appointing such representative.

### **10.4 Key Individuals**

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

City as part of the planned and orderly replacement of Key Individuals pursuant to this Section 10.4(b), Project Co or a Project Co Party shall not, for the planned period of the Maintenance and Rehabilitation Services, require or request any such person to be involved in any other project if, in the reasonable opinion of the City, such involvement would have a material adverse effect on the Maintenance and Rehabilitation Services. For the purposes of this section, only the following reasons will be considered beyond the control of Project Co or a Project Co Party: death; short term disability; or long term disability or any other reason determined in the opinion of the City, acting reasonably (Project Co shall provide to the City any further documentation as may be reasonably requested by the City to assess any reason beyond the control of Project Co).

- (c) Subject to Project Co's obligations to ensure that Key Individuals remain involved in the Works and in the Maintenance and Rehabilitation Services as set out in Sections 10.4(a) and 10.4(b), if it becomes necessary for Project Co to replace any individual identified in Schedule 9 - Key Individuals, Project Co shall nominate a competent suitably qualified and experienced permanent replacement or replacements as soon as practicable and provide the City with relevant information on the proposed replacement and shall consult with the City before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of the City, which consent shall not be withheld or delayed where Project Co is compliant with Sections 10.4(a), 10.4(b) and 10.4(d) and the proposed replacement is suitably qualified and experienced. For those Key Individual's in respect of whom liquidated damages amounts are ascribed in Schedule 9 – Key Individuals, in the event Project Co fails to nominate a competent suitably qualified and experienced permanent replacement or replacements for a period of greater than 60 days from the date it became necessary for Project Co to replace any such Key Individual, Project Co shall pay to the City the liquidated damages ascribed in Schedule 9 – Key Individuals. The Parties agree that the liquidated damages set out in this 10.4(c) are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of Project Co's failure to provide the applicable Key Individual.
- (d) If the City determines, acting reasonably, that it is in the best interests of the City that any individual identified in Schedule 9 - Key Individuals be replaced, the City shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 60 days after receipt by Project Co of such Notice, Project Co shall provide the City with relevant information on the proposed replacement and shall consult with the City before finalizing the appointment of such replacement.

## **11. WORKS COMMITTEE**

### **11.1 Establishment**

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

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

## **11.2 Function and Role**

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works. The Works Committee shall interface with the Maintenance Committee as and when required.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
- (i) any design, construction and commissioning issues;
  - (ii) the Works Schedules;
  - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
  - (iv) any quality assurance and safety and security issues, including any design, configuration control, interfacing, training, testing, operational impact and other matters creating or giving rise to a safety or security issue or otherwise requiring attention and oversight;
  - (v) the Works Reports;
  - (vi) any special matters referred to the Works Committee by Project Co;
  - (vii) any Proceeding At Risk Matters referred to the Works Committee in accordance with Section 11.6.
  - (viii) any community and media relations issues in accordance with Schedule 18 - Communications and Stakeholder Engagement Obligations;
  - (ix) any issues related to Schedule 7 – Mobility Matters; and

- (x) any other issues pertaining to the Works.
- (c) Subject to Section 11.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
  - (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any change to Key Works Milestones set out in the Works Schedule, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
  - (iii) any Variation;
  - (iv) any change that may materially adversely affect Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
  - (v) any matter with respect to which the City has a right of consent or in respect of which the City may exercise discretion pursuant to this Project Agreement.

### **11.3 Term of Works Committee**

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

### **11.4 Replacement of Committee Members**

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

### **11.5 Procedures and Practices**

- (a) The members of the Works Committee may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
  - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and

- (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representative or the City Representative may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than five Business Days' Notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such Notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site in the City of Ottawa or in any other location in Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) Four representatives of the City (one of whom shall be the City Representative) and the three representatives of Project Co shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within five Business Days of the holding of the meeting or the making of the recommendation or decision. Unless the City notifies Project Co within five Business Days of receipt of the minutes that the City disagrees with the contents of the minutes, the City and Project Co shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by the City during regular business hours.

## **11.6 Proceeding At Risk**

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

- then the City may issue to Project Co (with a copy to the Independent Certifier) a notice (the “**Proceeding At Risk Notice**”) identifying the City’s reasons for issuing the Proceeding At Risk Notice and requesting Project Co to deliver any relevant Design Data and any other information reasonably required by the City from Project Co to review the Proceeding At Risk Matter.
- (b) Following the issuance of a Proceeding At Risk Notice, the City Representative and the Project Co Representative, together with the other members of the Works Committee, shall each promptly and diligently make a reasonable *bona fide* effort to resolve the Proceeding At Risk Matter. The Independent Certifier shall be required to attend all meetings and deliberations of the Works Committee at which the Proceeding At Risk Matter is considered, but shall not be entitled to participate in any decisions of the Works Committee.
  - (c) Within 10 Business Days after receipt by Project Co of a Proceeding At Risk Notice, Project Co shall deliver a response to the City and each member of the Works Committee, which shall include:
    - (i) the Design Data and any other information reasonably requested by the City in the Proceeding At Risk Notice;
    - (ii) Project Co’s opinion confirming agreement with, or disputing the opinion of, the City regarding the Proceeding At Risk Matter;
    - (iii) any additional Design Data and other information in support of Project Co’s opinion regarding the Proceeding At Risk Matter; and
    - (iv) Project Co’s proposal to rectify the Proceeding at Risk Matter.
  - (d) Within 5 Business Days after receipt by the City of the response from Project Co pursuant to Section 11.6(c), the City shall notify Project Co if the City requires any additional information from Project Co. Project Co shall provide such additional information to the City, each member of the Works Committee and the Independent Certifier within 5 Business Days after receipt of such notice.
  - (e) The Independent Certifier shall, within 30 Business Days of the Proceeding At Risk Notice, deliver to each of the City and Project Co its written opinion as to whether the City acted reasonably in delivering the Proceeding At Risk Notice.
  - (f) Within 15 Business Days after receipt by the City of all deliverables contemplated by Section 11.6(c) and, if applicable, Section 11.6(d), and in any event, no later than 35 Business Days after receipt by Project Co of the Proceeding At Risk Notice, the Works Committee shall meet in person (the “**PAR Meeting**”), to attempt to resolve the Proceeding At Risk Matter.
  - (g) Within 5 Business Days after the PAR Meeting and, in any event, no later than 40 Business Days after receipt by Project Co of the Proceeding At Risk Notice (the “**PAR Meeting Expiry Date**”), the Works Committee shall attempt to reach a final decision with respect to the Proceeding At Risk Matter. If the Works Committee is unable to reach a final decision, and the Independent Certifier’s opinion delivered pursuant to Section 11.6(e) confirms that the City acted reasonably in delivering the Proceeding At Risk Notice, Project Co shall be deemed to be “**Proceeding At**

**Risk**” and the City may, in its sole discretion, give notice to the Lenders’ Agent pursuant to Section 15 of the Lenders’ Direct Agreement, that Project Co is Proceeding At Risk, together with the relevant information supporting the City’s opinion that Project Co is Proceeding at Risk.

- (h) Regardless of the Independent Certifier’s opinion, if the Works Committee fails to reach a final decision with respect to the Proceeding At Risk Matter by the PAR Meeting Expiry Date, either Party may refer the Proceeding At Risk Matter for resolution in accordance with Schedule 26 – Dispute Resolution Procedure.
- (i) The Proceeding At Risk Notice, review, and comments made during the process set out in this Section 11.6 are for general conformity to the obligations and requirements of this Project Agreement, and any such notice, review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and the requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for the City
- (j) If it is determined in accordance with Schedule 26 – Dispute Resolution Procedure that Project Co should not have been deemed to be Proceeding at Risk under Section 11.6(g), the City shall (i) promptly notify the Lender’s Agent that it is withdrawing its notice given pursuant to Section 11.6(g), if applicable, and (ii) reimburse Project Co for its reasonable costs incurred in connection with responding to a Proceeding at Risk Notice and for its participation in the Proceeding at Risk Matter.

## **12. MAINTENANCE COMMITTEE**

### **12.1 Establishment**

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

### **12.2 Function and Role**

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

- the Maintenance Period. The Maintenance Committee shall interface with the Works Committee as and when required.
- (b) The Maintenance Committee shall be responsible for receiving and reviewing all matters related to the System Infrastructure, both prior to and during the Maintenance Period, including:
- (i) any joint review of the System Infrastructure and the Output Specifications;
  - (ii) any performance issues;
  - (iii) any special matter referred to the Maintenance Committee by the City or Project Co;
  - (iv) any community and media relations issues in accordance with Schedule 18 - Communications and Stakeholder Engagement Obligations; and
  - (v) any other issues pertaining to the Project Operations (excluding the Works).
- (c) Subject to Section 12.2(d), any unanimous decision of the Maintenance Committee shall be final and binding on the Parties. If the Maintenance Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.
- (d) The Maintenance Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any Variation;
  - (iii) any change that may materially adversely affect Project Co's ability to perform the Maintenance and Rehabilitation Services or the performance by the relevant parties of any Governmental Activities; or
  - (iv) any matter with respect to which the City has a right of consent or in respect of which the City may exercise discretion pursuant to this Project Agreement.

### **12.3 Replacement of Committee Members**

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

### **12.4 Procedures and Practices**

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

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

### **13. INTEGRATED MANAGEMENT SYSTEM**

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

- (b) Project Co shall cause (A) the Construction Contractor, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems on an annual basis until Final Completion or as otherwise required in accordance with Sections 9.6(c)(vi)(C) or 9.6(c)(vii)(C) (each, an “**H&S Construction Inspection**”), and (B) cause the Maintenance and Rehabilitation Contractor, at its sole cost and expense, to conduct an inspection of its facilities and its health and safety management systems on an annual basis commencing on the first anniversary of the Substantial Completion Date and thereafter until the end of the Project Term or as otherwise required in accordance with Sections 9.6(c)(vi)(C) or 9.6(c)(vii)(C), (each, an “**H&S Maintenance Inspection**”), which H&S Construction Inspection and H&S Maintenance Inspection shall:
- (i) be conducted by a Certified H&S Inspector;
  - (ii) during the performance of the Works, include, at a minimum (A) a review of general compliance with all applicable *Occupational Health and Safety Act* (Ontario) requirements, compliance with all safety manuals applicable to the Site at which the Works are being conducted and (B) a review of the Construction Contractor’s job hazard analysis documentation on any portion of the Lands which could endanger or put at risk the safety of any Person working at the Site; and
  - (iii) during the performance of the Maintenance and Rehabilitation Services, include, at a minimum (A) a review of general compliance with all applicable Occupational Health and Safety Act (Ontario) requirements, and compliance with all safety manuals applicable to the provision of the Maintenance and Rehabilitation Services and (B) a review of the Maintenance and Rehabilitation Contractor’s job hazard analysis documentation relating to the provision of Maintenance and Rehabilitation Services.
- (c) Project Co shall cause the results of each H&S Construction Inspection (such results referred to as the “**H&S Construction Inspection Report**”) to be delivered to the City and the Works Committee not more than 10 Business Days from the date on which a H&S Construction Inspection is completed. An H&S Construction Inspection Report arising from an H&S Construction Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Inspection Report was issued.
- (d) Project Co shall cause the results of each H&S Maintenance Inspection (such results referred to as the “**H&S Maintenance Inspection Report**”) to be delivered to the City and the Maintenance Committee not more than 10 Business Days from the date on which a H&S Maintenance Inspection is completed. Any H&S Maintenance Inspection Report arising from an H&S Maintenance Inspection shall be tabled and presented by Project Co for discussion by the Maintenance Committee at the next meeting of the Maintenance Committee that follows the date on which such H&S Maintenance Inspection Report was issued.
- (e) To the extent an H&S Construction Inspection Report or H&S Maintenance Inspection Report, as the case may be, discloses any non-compliance by the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the ISO 45001 Certified Maintenance and Rehabilitation Project Co Party, or the COR-Qualified Maintenance and Rehabilitation Project Co Party, as the case may be, with the terms of the COR Certification or OHSAS 18001

Accreditation, as the case may be, the City shall have the right to require Project Co to cause the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the COR-Qualified Maintenance and Rehabilitation Project Co Party and the ISO 45001 Certified Maintenance and Rehabilitation Project Co Party, as the case may be, at its sole cost and expense:

- (i) to take any corrective and remedial action required by the H&S Construction Inspection Report or H&S Maintenance Inspection Report, as the case may be, to correct any such non-compliance, and Project Co shall cause the COR-Qualified Construction Project Co Party, the COR-Certified Construction Project Co Party, the COR-Qualified Maintenance and Rehabilitation Project Co Party and the ISO 45001 Certified Maintenance and Rehabilitation Project Co Party, as the case may be, to comply with all instructions given by the Certified H&S Inspector in respect of actions required to be taken to correct any such non-compliance;
- (ii) to arrange to have conducted by a Certified H&S Inspector such follow-up H&S Construction Inspections and H&S Maintenance Inspections, as the case may be, of those facilities and health management systems associated with the non-compliances identified in the relevant H&S Construction Inspection Report (each, an “**H&S Construction Re-Inspection**”) or in the relevant H&S Maintenance Inspection Report (each an “**H&S Maintenance Re-Inspection**”), in each case, within 10 Business Days from the date on which any such request is made by the City, until any and all corrective and remedial actions required by the Certified H&S Inspector with respect to the correction of each identified non-compliance is completed to the satisfaction of the Certified H&S Inspector;
- (iii) to cause the results of each H&S Construction Re-Inspection (such results referred to as the “**H&S Construction Re-Inspection Report**”) to be delivered to the City and the Works Committee not more than 10 Business Days from the date on which an H&S Construction Re-Inspection is completed. An H&S Construction Re-Inspection Report arising from an H&S Construction Re-Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Re-Inspection Report was issued; and
- (iv) to cause the results of each H&S Maintenance Re-Inspection (such results referred to as the “**H&S Maintenance Re-Inspection Report**”) to be delivered to the City and the Maintenance Committee not more than 3 Business Days from the date on which an H&S Maintenance Re-Inspection is completed. An H&S Maintenance Re-Inspection Report arising from an H&S Maintenance Re-Inspection shall be tabled and presented by Project Co for discussion by the Maintenance Committee at the next meeting of the Maintenance Committee that follows the date on which such H&S Maintenance Re-Inspection Report was issued.

## **14. ACCESS TO THE LANDS**

### **14.1 Access to Lands**

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

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

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

#### **14.2 Non-exclusive License to Lands / Development of Lands**

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

#### **14.3 Naming and Signage**

- (a) Project Co acknowledges that the City reserves and retains,
  - (i) all rights to designate the name for the System Infrastructure, or any part thereof, and the New Municipal Infrastructure and to retain all revenues derived from the sponsorship of such names;
  - (ii) all rights to signage in relation to the Lands and any part of the System Infrastructure and the New Municipal Infrastructure; and
  - (iii) all rights, Trade-Marks, naming or branding regarding the System Infrastructure, or any parts thereof and the New Municipal Infrastructure.
- (b) Without limiting the City's rights pursuant to Section 14.3(a), with the prior written consent of the City, which may take into consideration any applicable governmental guidelines, including guidelines set out in Schedule 18 - Communications and Stakeholder Engagement Obligations and Schedule 33 – Lands, Project Co, the Project Co Parties and the Lenders may, for the period prior to Substantial Completion, erect and maintain signage (which may include such parties' logos and trade names) at or on the Lands identifying their respective roles in connection with the development and construction of the Project provided that such signage is erected and maintained in accordance with the requirements and restrictions set out in this Project Agreement, including Schedule 15 – Output Specifications and Schedule 18 – Communication and Stakeholder Engagement Obligations.

#### **14.4 No Interest in Land, Facilities or Infrastructure**

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

#### **14.5 Non-Disturbance Agreement**

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

#### **14.6 Adjustments to Lands Available to Project Co**

- (a) [REDACTED]
- (b) [REDACTED]
- (c) Project Co shall be entitled to obtain any properties (or obtain temporary access to any properties) at its own cost and expense, however, such properties shall not, for the purposes of this Project Agreement, be Lands and no System Infrastructure or New Municipal Infrastructure shall be located on, or rely in any way upon, on any properties which Project Co acquires pursuant to this Section 14.6(b).

## **15. ENCUMBRANCES**

### **15.1 Project Co Shall Perform Obligations Under Encumbrances**

- (a) Project Co's access to and use of the Lands or any part thereof granted in Article 14 shall be subject to the Encumbrances.
- (b) Subject to Section 15.2, Project Co shall perform all obligations of the City under all Encumbrances for or on behalf of the City, other than:
  - (i) obligations which Project Co is not legally capable of performing for or on behalf of the City; and
  - (ii) obligations which the applicable counterparty to such Encumbrance formally relieves or waives Project Co from performing, with the consent of the City, in its sole discretion (and if such relief or waiver is not consented to by the City, and subject to Section 15.1(b)(i), Project Co shall perform such obligations in accordance with this Section 15).
- (c) Project Co, whether before, during or after the completion of the Works, shall not in any manner breach the Encumbrances.

### **15.2 No Encumbrances**

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be created, filed, issued or registered upon or against the Lands or any part of them or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) Project Co does not have title to the Lands or any interest therein, and no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Lands or any part thereof, except:
  - (i) as may be expressly agreed to in writing by the City;
  - (ii) as may be expressly permitted by the terms of this Project Agreement; or
  - (iii) as may be permitted under Applicable Law, but without limiting Project Co's obligations under Sections 15.2(c)(i) and 15.3(a).

- (c) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance following Financial Close:
- (i) due to an act or omission of Project Co or any Project Co Party (which has not been consented to in writing by the City), Project Co shall immediately take all steps necessary to terminate, remove, vacate or discharge such Encumbrance. If such Encumbrance is not terminated, removed, vacated or discharged within ten (10) Business Days of Project Co becoming aware of the creation, filing, issuance or registration of such Encumbrance, then, without prejudice to any other rights or remedies it may have, the City may take whatever steps it deems necessary and appropriate (in its sole discretion) to terminate, remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand, and Project Co hereby appoints the City as Project Co's attorney to execute any termination or discharge of an Encumbrance referred to in this Section 15.2(c)(i), which appointment is coupled with an interest and shall be irrevocable for the Project Term and thereafter so long as any of Project Co's obligations under this Section 15.2(c)(i) are outstanding;
  - (ii) due to an act or omission of Project Co or any Project Co Party (which has been consented to in writing by the City), Project Co shall perform all obligations under such Encumbrance in accordance with Sections 15.1 and 15.3 (as is applicable) and at its sole cost and expense; or
  - (iii) which is not due to an act or omission of Project Co or any Project Co Party, prior to performing obligations under any such Encumbrance, Project Co shall promptly notify the City of any such Encumbrance and the City may elect, in its sole discretion, to:
    - (A) have such Encumbrance be removed, vacated or discharged at the City's sole cost and expense;
    - (B) perform the required obligations thereunder; or
    - (C) instruct Project Co to perform the required obligations thereunder.
- (d) For the purposes of this Section 15 if,
- (i) an encumbrance otherwise identified in Sections (b) (viii), (ix) or (x) of Schedule 16 – Encumbrances has not been complied with (excluding non-compliance by Project Co and Project Co Parties) and such non-compliance materially interferes with the use of the Lands for the purposes of the Project Operations; or
  - (ii) an encumbrance otherwise identified in Sections (b) (vii), (viii), (ix) or (x) of Schedule 16 – Encumbrances was not disclosed to Project Co and was not ascertainable through commercially standard off-title searches, and such encumbrance materially interferes with the use of the Lands for the purposes of Project Operations,

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

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

### **15.3 Construction Lien Act (Ontario)**

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

- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA.
- (c) Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Project Co shall promptly provide the City with a copy of any materials which are provided to the Lenders to evidence compliance with the CLA.
- (f) Upon request by the City, Project Co shall perform and deliver to the City a sub-search of title on the Lands or any part thereof. The City shall pay the reasonable costs of any such search except (i) a search that reveals Encumbrances that are not permitted by this Project Agreement, (ii) a search requested based on a reasonable suspicion that an Encumbrance that is not permitted by this Project Agreement has been registered on title to the Lands, and (iii) a search requested for the purpose of confirming that an Encumbrance that is not permitted by this Project Agreement has been discharged from title to the Lands.
- (g) Project Co shall cause a Payment Certifier to be appointed under the Construction Contract and shall cause such Payment Certifier to certify the substantial performance of the Construction Contract in accordance with the CLA.
- (h) The City shall provide Project Co with any notice of lien that is delivered to the City in connection with the Works promptly (and in any event within 5 Business Days) following receipt thereof.

## **16. SITE CONDITION**

### **16.1 Acceptance of Site Condition**

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

- (b) Section 16.1(a) is not intended to prohibit Project Co from relying upon information that has been provided by a person or other entity who has given Project Co an express written entitlement to rely on that information, provided, however, that, subject to Sections 6.4, 16.2, 16.3, 16.4, 16.5, 16.7, 16.8, 16.9 and 16.10, Project Co shall not be entitled to make any claim of any nature whatsoever against the City or any City Party on any grounds relating to the information provided by that person. For clarity, subject to Sections 6.4, 16.2, 16.3, 16.4, 16.5, 16.7, 16.8, 16.9 and 16.10, Project Co's legal recourse shall be against the person or other entity that provided the express written entitlement to rely on the information and not the City or any City Party.
- (c) Subject to Sections 6.4, 16.1(b), 16.2, 16.3, 16.4, 16.5, 16.7, 16.8, 16.9 and 16.10 Project Co acknowledges and agrees that it has and shall be deemed to have:
- (i) performed all necessary due diligence and investigation or inspection on the Lands and examined the Lands and their surroundings and the Existing Trillium Line Assets;
  - (ii) performed all necessary due diligence and investigation or inspection on Existing Trillium Line Assets and satisfied itself prior to executing this Project Agreement as to the structural, environmental and general condition of such Existing Trillium Line Assets;
  - (iii) satisfied itself as to the presence of any Contamination on, in or under the Lands, or migrating to or from the Lands in accordance with Good Industry Practice, taking into account all matters relating to the Lands, including any Existing Trillium Line Assets, and any other buildings, structures and works, on, over and under the Lands existing on the date hereof;
  - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Lands and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
  - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands;
  - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties; and
  - (vii) in accordance with Good Industry Practice, taking into account all matters relating to the Lands, including the presence of any Existing Trillium Line Assets and any other buildings, structures and works, on over and under the Lands existing on the date hereof satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Lands, the loadbearing and other relevant properties of the Lands, the risk of injury or damage to property affecting the Lands, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works.
- (d) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation

delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

**16.2 Contamination**

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

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

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

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

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

### **16.3 Items of Geological, Historical Heritage or Archaeological Interest or Value**

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Lands are or shall be the sole and absolute property and responsibility of the City or the owner of the relevant property, as applicable.
- (b) The City shall be responsible for items referred to in Section 16.3(a) except for any such items that were described in, or were properly inferable, readily apparent or readily discoverable from,
  - (i) the Archaeological Reports; or

- (ii) any Cultural Heritage Reports.
- (c) Upon the discovery of any item referred to in Section 16.3(a), Project Co shall:
  - (i) immediately inform the City Representative of such discovery; and
  - (ii) take all steps not to disturb the item and, if necessary, cease any Project Operations in so far as performing such Project Operations would endanger the item or prevent or impede its excavation, take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found, and comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremations Services Act, 2002* (Ontario) and the *Standards & Guidelines for Conservation of Provincial Heritage Properties* issued under the *Ontario Heritage Act* (Ontario) and the *Standards and Guidelines for the Conservation of Historic Places in Canada*:
    - (A) at the City's cost pursuant to Section 16.3(e), in respect of any such discovery for which the City is responsible pursuant to Section 16.3(b); and
    - (B) at its own cost in respect of any such discovery for which it is responsible pursuant to Section 16.3(b),
  - (iii) comply with all requirements set out in Part 6 of Schedule 17-Environmental Obligations.
- (d) In the event that the City wishes Project Co to perform actions in respect of any discovery of any item referred to in Section 16.3(a) which are in addition to any required pursuant to Section 16.3(c), then the City shall issue an instruction to Project Co specifying what action the City requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the City's cost pursuant to Section 16.3(e).
- (e) If Sections 16.3(c) or 16.3(d) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of any such discovery for which the City is responsible pursuant to Section 16.3(b) or as a result of any instructions given by the City pursuant to Section 16.3(d) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation shall,
  - (i) prior to Substantial Completion (but in the case of Section 16.3(c), only to the extent it directly results in the interruption of the Works), subject to and in accordance with Section 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event; and
  - (ii) following Substantial Completion, subject to and in accordance with Schedule 21 – Variation Procedure, result in a Variation.
- (f) In the event that the City and Project Co do not agree as to the nature or extent of the actions required to be performed by Project Co pursuant to Section 16.3(c)(ii), such disagreement shall be referred for determination to the Independent Certifier, and if the Independent Certifier is unable to make the determination, then he or she shall appoint an independent and suitably qualified and

experienced person to make such determination (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person's decision shall be final and binding on the Parties except to the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.

#### **16.4 Species-at-Risk**

- (a) Project Co shall be responsible for any Species-at-Risk which may be found on, in or at the Site, the occurrence of which, in the location in which it is found was described in the Environmental Assessments. The City shall be responsible for any Species-at-Risk which may be found on, in or at the Site, except for any Species-at-Risk the occurrence of which, in the location in which it is found was described in the Environmental Assessments
- (b) In respect of Species-at-Risk for which Project Co is responsible pursuant to Section 16.4(a), Project Co shall, at its own cost, comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 17 – Environmental Obligations. Upon the discovery of any Species-at-Risk for which the City is responsible pursuant to Section 16.4(a), Project Co shall:
  - (i) immediately inform the City Representative of such discovery; and
  - (ii) comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 17 - Environmental Obligations in respect thereof, including taking all necessary steps to preserve the respective habitat and relocate the Species-at-Risk at the City's cost pursuant to Section 16.4(d).
- (c) In the event that the City wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.4(b), then the City shall issue an instruction to Project Co specifying what action the City requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the City's cost pursuant to Section 16.4(d).
- (d) If Sections 16.4(b) or 16.4(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of the discovery of any Species-at-Risk for which the City is responsible pursuant to Section 16.4(a) or as a result of any instructions given by the City pursuant to Section 16.4(c) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
  - (i) prior to Substantial Completion shall, subject to and in accordance with Section 38, be treated as a Delay Event and, subject to and in accordance with Section 39, be treated as a Compensation Event; and
  - (ii) following Substantial Completion shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.

#### **16.5 Defects – Existing Vehicle Fleet**

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

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

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

- (e) The City shall consider the contents of any notice provided by Project Co pursuant to Section 16.5(d), and shall advise Project Co within a reasonable time of receipt of such notice as to whether it agrees with the contents of the notice and, if applicable, what steps the City proposes to take to comply with the Existing Vehicle Maintenance Standard. In the event that the City and Project Co do not agree as to the nature or extent of the actions required to be performed by the City to meet the requirements of the Existing Vehicle Maintenance Standard, such disagreement shall be referred for determination to the Independent Certifier, and if the Independent Certifier is unable to make the determination, then he or she shall appoint an independent and suitably qualified and experienced person acceptable to Project Co and the City, each acting reasonably, to make such determination (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person's decision shall be final and binding on the Parties except to the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.

#### **16.6 Defects – Existing Trillium Line Assets**

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

#### **16.7 Latent Defects – Dow's Lake Tunnel Structure**

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

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

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

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

#### **16.8 Latent Defects – Existing City Retained Latent Defect Structures**

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

such event shall:

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

#### **16.9 Defects Correction – General Provisions**

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

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

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

#### **16.10 Mislocated or Unknown Utilities**

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

### **17. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS**

#### **17.1 Governmental and Utility Company Fees**

- (a) Project Co shall be responsible for,

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

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

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

## **18. CHANGE IN STANDARDS**

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the Project Operations, and that standard has changed between the date of this Project Agreement (or in respect of the Revenue Vehicle Supplier only, November 2, 2017) and the date that such compliance is required, then Project Co shall give Notice to the City of such change. If, after such Notice, the City requires compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Project Operations and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation. If the City does not

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

## **19. COORDINATION AND NO DISRUPTION**

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

## **20. DESIGN AND CONSTRUCTION OBLIGATIONS**

### **20.1 Overall Responsibility**

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

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

## **20.2 Completion of System Infrastructure and New Municipal Infrastructure**

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

## **20.3 Development of Design**

- (a) Project Co shall, at its own cost, develop and complete the design of the System Infrastructure, the New Municipal Infrastructure and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 - Review Procedure and this Section 20.3.
- (b) The further development of the design of the System Infrastructure and New Municipal Infrastructure and the process by which such design is progressed must fully comply with the requirements of this Project Agreement.
- (c) In order to develop the detailed design of the System Infrastructure and the New Municipal Infrastructure, Project Co shall consult with the Stakeholders (which consultation requirements pursuant to the Environmental Assessments are further described in Schedule 17 - Environmental Obligations) the City Representative and the City Design Team in an interactive process. If the result of any consultation with Stakeholders is a change to the scope, configuration or size of any

System Infrastructure, the New Municipal Infrastructure or a change in the Construction Activities, or a change in the Maintenance and Rehabilitation Services, then such change shall, subject to and in accordance with Schedule 21 - Variation Procedure, result in a Variation.

- (d) The Parties agree that Appendix A to Schedule 10 - Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include (to a scale required by the City Representative):
- (i) design development drawings, reports, schedules and specifications progressed from Commercial Close with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawing documentation, submitted at
    - (A) Pre-Final Design Development (PFDD); and
    - (B) Final Design Development (FDD);(collectively, the “**Design Development Submittals**”);
  - (ii) working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement, submitted upon completion thereof and as required in accordance with Schedule 10 - Review Procedure (collectively, the “**Construction Document Submittals**”); and
  - (iii) all other reports, studies, plans and documentation required pursuant to Schedule 10 - Review Procedure or otherwise identified in the Project Agreement.
- (e) Project Co shall submit to the City Representative for review in accordance with Schedule 10 - Review Procedure all Design Data and other items listed in Section 20.3(d).
- (f) The Design Data and other items listed in Section 20.3(d) must contain, at a minimum, the information required pursuant to Article 3 of Schedule 10 – Review Procedure, and must identify where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (g) The Design Data and other items listed in Section 20.3(d) must contain, at a minimum, the following additional information:
- (i) identification of the stage of design or construction to which the documentation relates;
  - (ii) all design or construction drawings and specifications necessary to enable the City Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 - Review Procedure;
  - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and

- (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (h) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the System Infrastructure or the New Municipal Infrastructure prior to being entitled to proceed in accordance with Schedule 10 - Review Procedure and it is subsequently determined in accordance with Schedule 10 - Review Procedure or Schedule 26 - Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk undo, remove from the System Infrastructure or the New Municipal Infrastructure and replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (i) [Intentionally deleted].
- (j) Neither the City nor any City Party will have any liability:
  - (i) if a document submitted by Project Co and reviewed by the City, the City Representative or the City Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
  - (ii) for any loss or claim arising due to any defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (k) Project Co and the City will cooperate with each other in the design review process. Notwithstanding such cooperation by the City, such review shall not constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (l) Project Co shall allow the City Representative and the City Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the City Representative and/or the City Design Team, as applicable, as soon as practicable following receipt of a written request from the City Representative.
- (m) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database and a web based Review Procedure Activities Register, which Project Co and the City may access remotely by computer to:
  - (i) view drawings comprised within the Design Data;
  - (ii) electronically store and print copies of such Design Data; and
  - (iii) track the status of each Works Submittal, pursuant to Article 3 of Schedule 10 – Review Procedure.

#### **20.4 Start-Up Meeting**

- (a) Within 10 Business Days after Commercial Close, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with the City to set out the design development process in greater detail.

- (b) The agenda for the Start-Up Meeting shall include the following:
- (i) Project Co's plan to develop a successful long-term partnership with the City for the purpose of supporting the City in achieving its vision, mission and core values;
  - (ii) Project Co's plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
  - (iii) Project Co's process to ensure optimum design quality;
  - (iv) Project Co's approach to ensure that all Project Co Parties perform the Works, as applicable, as a fully integrated team;
  - (v) a proposed schedule of Works Submittals which is consistent with the Current PBS and which provides for a progressive and orderly flow of Works Submittals from Project Co to the City Representative to allow sufficient time for review of each Works Submittal by the City Representative, and taking into account both the resources available to the City Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Current PBS;
  - (vi) Project Co's plan to successfully integrate feedback from consultations with Stakeholders and the City Design Team;
  - (vii) Project Co's approach to timing, construction, and adjustment; and
  - (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation and that takes into account the document security protocol described in Section 50.5(f).

## **20.5 Design Review Meetings**

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

- (iv) Project Co shall circulate to the City and the City Design Team an agenda for each of the Design Review Meetings no later than 10 Business Days prior to the relevant Design Review Meeting;
  - (v) in advance of a Design Review Meeting, Project Co may submit to the City Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform the City on the development of System Infrastructure and New Municipal Infrastructure design and provide an opportunity for dialog on compliance with the requirements of the Project Agreement. For greater certainty, interim submissions shall be informal and shall not be reviewed in accordance with Schedule 10 - Review Procedure;
  - (vi) the Design Review Meetings shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
  - (vii) Project Co shall maintain minutes of the Design Review Meetings, including possible design solutions and changes in design, and, within 5 Business Days after each Design Review Meeting, Project Co shall provide to the City and the City Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting; and
  - (viii) the City and Project Co agree that the subject matter of the Design Review Meetings shall not be regarded as Submittals to which Schedule 10 - Review Procedure applies, and that the City shall not be bound by the input provided in connection with the Design Review Meetings.
- (b) The Parties shall, together with the City Design Team, hold Design Review Meetings prior to the submission of:
- (i) each of the Design Development Submittals; and
  - (ii) each of the Construction Document Submittals.
- (c) The purpose of the Design Review Meetings is to facilitate the incorporation of the City input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

## **20.6 Testing**

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

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

#### **20.7 Performance of Design Obligations**

- (a) In the design and engineering of the System Infrastructure and New Municipal Infrastructure, Project Co, its consultants and the Project Co Parties shall exercise the standard of care normally exercised by licensed or registered professional engineering and architectural personnel and other licensed or registered professionals, as applicable, having knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Project Co shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario and all other applicable standards, specifications and codes, as otherwise required by Applicable Law.

#### **20.8 General Construction Obligations**

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

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

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

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

#### **20.9 Substitutions**

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project Agreement by using the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name or description, the naming or identification of the item is intended to establish the type and the minimum function and quality required, and equipment, components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors shall not be substituted without the prior written consent of the City, which shall not be unreasonably withheld by the City if any such item is no longer commercially available.

#### **20.10 Works Submittals**

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

#### **20.11 [Intentionally Deleted]**

#### **20.12 Apprenticeship Plan and Program**

- (a) No later than six months after Financial Close, Project Co shall provide a plan setting out Project Co's Project-specific approach to maximizing apprenticeship opportunities on the Project in connection with the completion of the Works (the "**Apprenticeship Plan**") for review and approval by the City. The Apprenticeship Plan shall include,

- (i) specific objectives for apprenticeship opportunities for the Project on a trade-by-trade basis;
  - (ii) apprenticeship opportunities for each trade required on the Project;
  - (iii) a confirmation that apprenticeships will be registered with the Ministry of Advanced Education and Skills Development and the Ontario College of Trades, as applicable;
  - (iv) a program to ensure the required supply of apprentices to meet Project Co's Apprenticeship Plan targets and requirements; and
  - (v) a program to support apprentices on the Project, to complete their apprenticeships prior to the Substantial Completion Date and, for those whose apprenticeships are not complete by the Substantial Completion Date a program to support apprentices to complete their apprenticeships after the Substantial Completion Date.
- (b) Project Co shall implement the approved Apprenticeship Plan.
- (c) Project Co shall provide an annual report to the City on the implementation of the Apprenticeship Plan which report shall include,
- (i) statistics on the number of apprentices involved in the Project relative to the number of journeypersons, for each month of the Project; and
  - (ii) detailed information setting out Project Co's progress toward achieving the objectives set out in the Apprenticeship Plan, including an identification of barriers that prevented Project Co from achieving its objectives.
- (d) The City may require Project Co to amend its Apprenticeship Plan if, in its opinion, acting reasonably, Project Co is failing to maximize apprenticeship opportunities on the Project pursuant to the then current Apprenticeship Plan.
- (e) The City may, in its sole discretion, release Project Co's Apprenticeship Plan to the public. Project Co's Apprenticeship Plan shall not be Confidential Information.

### **20.13 Utility Works - Cash Allowance**

- (a) Project Co shall perform and complete, the Project Co Utility Works, and shall procure and coordinate the performance and completion of the Utility Company Self-Performed Works by the applicable Utility Company pursuant to Utility Agreements:
- (i) so as to satisfy the Output Specifications, and in particular, Article 8 of Schedule 15-2—Design and Construction Requirements;
  - (ii) so as to satisfy the Design and Construction Specifications;
  - (iii) in accordance with the Works Schedule; and
  - (iv) in accordance with the other terms and conditions of this Project Agreement.

- (b) Project Co shall complete or cause the completion of the Utility Works as a precondition to achieving Substantial Completion. Project Co shall be solely responsible for coordinating the Utility Works with its activities in respect of the Project Operations and shall not be entitled to an extension of time or additional compensation in respect of the remainder of the Works as a result of the Utility Works or any matter relating thereto, except as provided for in this Section 20.13 or in Section 16.10.
- (c) The Project Co Utility Works shall be reviewed, certified, financed and paid for as part of Earned Value in accordance with Schedule 20 – Construction Period Payments. The Utility Company Self-Performed Works shall be reviewed, certified, financed and paid for in accordance with this Section 20.13. Project Co shall not be required to obtain financing for the costs of the Utility Company Self-Performed Works.
- (d) Prior to entering into a Utility Agreement for the performance of Utility Company Self-Performed Work, Project Co shall submit to the City Representative a draft of such agreement setting out the scope and pricing proposed by the Utility Company for the performance of the Utility Company Self-Performed Work for review and approval by the City. The City may, in conjunction with Project Co, for a period not to exceed 10 Business Days from receipt of the draft agreement, engage with the Utility Company to negotiate final scope and pricing for inclusion in the Utility Agreement based upon preferential pricing arrangements which the City may have with the applicable Utility Company, and notify Project Co by the end of such 10 Business Day period of the results of such discussions, and the City’s approval of the final scope and pricing to be contained in the applicable Utility Agreement. Project Co shall enter into the Utility Agreement on such City approved terms. The City will only pay the Utility Company Works Cash Allowance and Utility Works Fee in respect of Utility Agreements which have been approved by the City in accordance with this subsection 21.13(d). Failure for the City to provide comments on the draft agreements within the 10 Business Day period mentioned above will be deemed an acceptance of such draft by the City.
- (e) The estimated cost of the Utility Company Self-Performed Works is \$[REDACTED] (the “**Utility Company Works Cash Allowance**”) plus applicable HST, and shall be paid for by the City on a monthly progress basis as the Utility Company Self-Performed Works are progressed and invoiced by the applicable Utility Company to Project Co. In the event that the actual costs of the Utility Company Self-Performed Works as evidenced by invoices rendered by the applicable Utility Company exceeds the estimated Utility Company Works Cash Allowance for any cause other than the negligence, default or willful misconduct of Project Co or any Project Co Party, the City shall pay such additional cost, plus applicable HST and the applicable Utility Works Fee applicable to such additional cost.
- (f) The City shall also pay Project Co a fee of [REDACTED]% of the Utility Works Cost (the “**Utility Works Fee**”), plus applicable HST, for the management, coordination and administration of the completion of the Utility Company Self-Performed Works.
- (g) Project Co may, on a monthly basis, provide to the City Representative and the Independent Certifier a request for payment (each, a “**Request for Utility Works Payment**”) that includes (i) an itemized breakdown of the applicable Utility Company Self-Performed Works invoiced in the previous month by a Utility Company, (ii) the Utility Works Fee applicable to the costs of the Utility Company Self-Performed Works included in such invoice, and (iii) applicable HST in

respect of the amounts specified in (i) and (ii) above. Such Request for Utility Works Payment may be delivered concurrently with an application for progress payments on account of Earned Value achieved in respect of Project Co Utility Works in accordance with Schedule 20 – Construction Period Payments, but shall be presented separately for processing and payment by the City.

- (h) Project Co shall include with each Request for Utility Works Payment the certification of the Independent Certifier that the relevant Utility Company Self-Performed Works described in such Request for Utility Works Payment is eligible for payment by the City in accordance with this Section 20.13.
- (i) Project Co shall include with each Request for Utility Works Payment such additional supporting documentation as the City Representative may reasonably require in connection with the claimed base progress payments, the estimated cost to complete the Utility Company Self-Performed Works, any cumulative projected variance from the estimated Utility Company Works Cash Allowance and any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Utility Company Self-Performed Works. Each Request for Utility Works Payment submitted to City shall be in a form stipulated by the City, acting reasonably, and shall support an “open-book” pricing approach for the completion of the Utility Company Self-Performed Works.
- (j) Within 10 Business Days of receipt of a Request for Utility Works Payment, the City shall, in consultation with the Independent Certifier, advise Project Co, in writing, whether or not it agrees with the particulars set out in the Request for Utility Works Payment. The City shall only be permitted to withhold its approval if either the City, or the Independent Certifier determine that the Request for Utility Works Payment does not contain the information that the City or the Independent Certifier require, acting reasonably, to discharge their obligations under this Section 20.13. If the City withholds its approval pursuant to this Section 20.13(j) and subsequently receives the information that the City requires, acting reasonably, to discharge its obligations under this Section 20.13, it shall, within 10 Business Days of its receipt of such information, make payment of the amount set out in the aforementioned Request for Utility Works Payment. Any Disputes with respect to determinations made under this Section 20.13 shall be resolved in accordance with Schedule 26 – Dispute Resolution Procedure.
- (k) If the City approves in writing the payment of the amount set out in a Request for Utility Works Payment, it shall make payment of the amount set out in the approved Request for Utility Works Payment within 10 Business Days of receipt of the Request for Utility Works Payment.
- (l) Project Co acknowledges and agrees that:
  - (i) all costs and expenses related to the administration and scheduling of the Utility Company Self-Performed Works, including, without limitation, the preparation of Requests for Utility Works Payment and any required reporting, shall be compensated solely by the Utility Works Fee; and,
  - (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co or any Subcontractor in connection with the Utility Company Self-Performed Works shall be to the credit of the City.

**20.14 Category 1 Utility Company Tracking System**

- (a) Project Co shall, at its own cost and risk, provide to the City a system to track the progress made by the Category 1 Utility Companies in performing the activities described in the Utility Baseline Report. More specifically, such system shall:
- (i) be kept updated on a daily basis and be available to the City in real time during normal business hours through a web-based interface which would include functionality to provide automated email alerts to a customizable frequency and set of email addresses;
  - (ii) be operational no later than the date upon which the first Category 1 Utility Company activity described in the Utility Baseline Report is commenced;
  - (iii) include a feature that highlights to the City and the applicable Category 1 Utility Company each outstanding applicable activity described in the Utility Baseline Report when it reaches the following milestone triggers:
    - (A) **[REDACTED]**% of the number of Business Days designated for completion by the Category 1 Utility Company in the Utility Baseline Report for the applicable activity described in the Utility Baseline Report; and
    - (B) **[REDACTED]**% of the number of Business Days designated for completion by the Category 1 Utility Company in the Utility Baseline Report for the applicable activity described in the Utility Baseline Report.
- (b) Project Co shall provide written notice to the City Representative with respect to any outstanding Category 1 Utility Company activity described in the Utility Baseline Report when it reaches the milestone triggers outlined in Section 20.14(a)(iii)(A) and Section 20.14(a)(iii)(B).
- (c) With respect to any failure by a Category 1 Utility Company to perform the obligations set out in the Utility Baseline Report, Project Co shall not be entitled to the Delay Event or Compensation Amount pursuant to Section 38.1(a)(xxii) unless the tracking system as described in this Section 20.14(a) is fully functional and available to the City, provides notice to the City of the milestones described in Section 20.14(a)(iii) and contains accurate information as to the progress made by the Category 1 Utility Companies in performing the activities described in the Utility Baseline Report at all material times.

**20.15 Documents**

- (a) For the duration of the Works, Project Co shall keep one copy of the current digital files of the Project Agreement, Project Documents, Works Schedule, submittals, reports, Variation Confirmations, Project Co Variation Notices, Variation Directives, partnering documents, records of meetings and all other documents necessary for the administration of the Project, all in good order and readily accessible and available to the City and the City Representative.
- (b) Project Co shall, where practical, keep one copy of current standards and manufacturers' literature specified in the Project Documents in good order and readily accessible and available to the City Representative for the duration of the Works.

## **21. ACCESS AND MONITORING**

### **21.1 Access for City Parties**

- (a) Subject to Section 21.1(b), but without limiting any of the City's rights in respect of the Lands, the System Infrastructure or the New Municipal Infrastructure, or the right of any third party in relation to that third party's portion of the Lands or New Municipal Infrastructure, Project Co acknowledges and agrees that throughout the Project Term, Project Co shall not restrict the access of the City, the City Parties, the Operator, and their respective representatives, to the Lands, the System Infrastructure or the New Municipal Infrastructure and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours, including for the purposes of general inspection or audit, or of attending any test or study being carried out in respect of the Works, or to fulfill any statutory, public or other duties or functions.
- (b) In exercising their access rights under Section 21.1(a) in respect of the Lands, the City, City Parties, the Operator and their respective representatives shall:
  - (i) provide reasonable prior Notice appropriate to the circumstances (other than for any offices or other facilities provided for the use of the City and/or City Parties); and
  - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time.

### **21.2 Increased Monitoring**

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

### **21.3 Right to Uncover**

- (a) Project Co shall ensure that the City is afforded advance Notice of, and that the City is afforded a full opportunity to witness, all inspection and test activity in accordance with the Inspection and Test Plan. If Project Co does not provide such Notice and opportunity, Project Co shall at the request of the City uncover any relevant part of the Works which have been covered up or otherwise put out of view or remove any relevant part of the Works that have been proceeded with in order to permit the City to witness the relevant inspection or test activity. Project Co shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Works.

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

#### **21.4 No Relief from Obligations**

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

#### **21.5 Access by Others**

- (a) Subject to Section 21.5(b) and subject to and in accordance with Section 9.8 (to the extent applicable), Project Co shall ensure that throughout the Project Term, without prejudice to any access rights of any such person as a member of the general public or pursuant to Applicable Law, that it does not restrict access to the Lands, System Infrastructure or the New Municipal Infrastructure for:
  - (i) the Independent Certifier to the extent required to perform its obligations pursuant to Schedule 6 – Independent Certifier Agreement;
  - (ii) inspectors and other persons authorized to act on behalf of the City and any counterparty to a Third Party Access Agreement, for inspection and/or acceptance purposes;

- (iii) all Other Contractors, including the owners or operators of any third party facilities and their agents at all reasonable times to exercise any right or power or perform any duty or obligation under any Applicable Law or the Utility Agreements, provided that, wherever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations;
  - (iv) all Governmental Authorities and Emergency Service Providers in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law and provided that, whenever consistent with the applicable requirements of such Governmental Authority, Emergency Service Providers or Applicable Law and the requirements of this Project Agreement (as the case may be), Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations;
  - (v) any City Party, Other Contractors, owners or operators of third party facilities, Governmental Authorities, Emergency Service Providers and Utility Companies for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Lands, the System Infrastructure or the New Municipal Infrastructure owned or operated by such person or in which such person has any interest, provided that, whenever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations; and
  - (vi) any City Party to undertake emergency training in relation to the System Infrastructure or the New Municipal Infrastructure.
- (b) Subject to Section 21.5(c), the City shall require persons accessing Site(s) on the Lands in accordance with access rights under Section 21.5(a) to:
- (i) provide reasonable prior Notice to Project Co appropriate to the circumstances;
  - (ii) comply with all relevant health and safety procedures and any reasonable directions with regard to health and safety that may be issued by or on behalf of the Project Co Representative from time to time; and
  - (iii) if reasonably required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.
- (c) Section 21.5(b) shall not apply,
- (i) to Additional Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Section 9.8;
  - (ii) in the case of access rights described in Section 21.5(a) for the purpose of responding to an Emergency;
  - (iii) for the purposes of responding to an emergency declared by the City or by a Governmental Authority; and

- (iv) in circumstance where the requirements of Section 21.5(b) are inconsistent with the requirements of the applicable Governmental Authority or Emergency Service Provider.

## **21.6 Public Use**

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

## **22. WORKS SCHEDULE**

### **22.1 Completion of Works**

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

### **22.2 The Works Schedule**

- (a) From Financial Close until PBS-2 becomes the Current PBS, PBS-1 shall be deemed to be the Current PBS and, until such time, the following provisions of the Project Agreement applicable to the Current PBS shall be applicable to PBS-1: Sections 9.2(a)(viii), 9.8(f)(ii), 9.8(f)(iii), 11.2(d), 20.1(a)(iv), 20.5(a)(iii) and 27.4(a)(i) of the Project Agreement; Sections 3.1(c)(ix) of Schedule 17 – Environmental Obligations; Section 1.6(b)(vii) of Schedule 21 - Variation Procedure; and Sections 1(b) and 1(c) of Schedule 31 – Works Report Requirements.
- (b) Project Co shall, in accordance with Schedule 12 – Works Scheduling Requirements, prepare and submit to the City and the Independent Certifier:
  - (i) within 75 days after Financial Close, PBS-2 and a schedule narrative in accordance with Section 2.3 of Schedule 12 - Works Scheduling Requirements indicating the differences between PBS-1 and PBS-2;
  - (ii) every month, within 10 Business Days after the end of each calendar month from Financial Close until Final Completion, the Monthly Progress Report and PBS Update in accordance with Schedule 31 – Works Reports Requirements;
  - (iii) within 10 Business Days after receipt of a written request from the City, acting reasonably, a Micro-Works Schedule for any specific area in accordance with Schedule 12 – Works Scheduling Requirements; and
  - (iv) Recovery Schedules, PBS Submittal, Look-ahead Schedules and As-built Schedules in accordance with Schedule 12 – Works Scheduling Requirements,each meeting the requirements of Schedule 12 – Works Scheduling Requirements to the satisfaction of the City that support the completion of the Works in accordance with Section 22.1.
- (c) The City shall review all submissions in accordance with Schedule 10 – Review Procedure.
- (d) At the request of the City Representative, the Project Co Representative shall review the Works Schedules with the City Representative to explain to the City Representative’s satisfaction:
  - (i) the activity logic and planning assumptions contained in the Works Schedule;
  - (ii) any proposed changes to the Critical Path of the Works; and
  - (iii) any other matter raised by the City Representative concerning the Works Schedules.
- (e) Project Co and the City shall comply with the provisions of Schedule 12 – Works Scheduling Requirements.
- (f) Any comment or lack of comment by the City in regards to any Works Schedule indicating potential Delay Events pursuant to Section 38.2(a) of the Project Agreement shall not constitute any acknowledgement or acceptance of the potential delay.

## **23. LEED, ENERGY AND ENVIRONMENTAL REQUIREMENTS**

### **23.1 Environmental Management / Contamination and Hazardous Substances**

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

**23.2 LEED Design and Construction Obligations**

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

**23.3 Mandatory Prerequisites and Credits**

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

**23.4 LEED Progress Reports**

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

**23.5 LEED Certified Rating**

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

other than as a direct result of any act or omission of the City or any City Party, Project Co shall pay to the City liquidated damages in the amount of \$[REDACTED]. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the City will suffer as a result of the happening of either of the specified events and would be difficult or impossible to quantify upon the happening of either of the specified events. Such payment shall constitute full and final settlement of any and all damages that may be claimed by the City as a result of a failure by Project Co to obtain the minimum number of points required pursuant to Section 23.3(b) or to achieve LEED® Canada Certified and, for greater

certainty, a failure by Project Co to obtain any of the mandatory prerequisites or credits set out in the Output Specifications or to achieve LEED® Canada Certified for the New Walkley Yard shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not the City incurs or mitigates its damages, and that the City shall not have any obligation to mitigate any such damages.

### **23.6 Greenhouse Gas Credits**

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

## **24. INDEPENDENT CERTIFIER**

### **24.1 Appointment**

- (a) On or prior to Financial Close, the Parties shall appoint an independent, suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 - Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 24.7(b).
- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

### **24.2 Role of Independent Certifier**

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

### **24.3 Changes to Terms of Appointment**

- (a) Neither the City nor Project Co shall without the other's prior written approval:
  - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
  - (ii) vary the terms of the Independent Certifier Agreement or the services performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

### **24.4 Right to Change Appointment**

- (a) The Parties agree that the Independent Certifier shall not provide any services or reports or other information to Project Co, the Lenders, the Project Co Parties or any other person other than pursuant to the performance of the functions of the Independent Certifier under this Project Agreement unless agreed to in writing by the Parties. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days' Notice to the Independent Certifier. If such Notice is given, then, pursuant to Section 24.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 days' Notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

#### **24.5 Cooperation**

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and the Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

#### **24.6 Payment of Independent Certifier**

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

#### **24.7 Replacement**

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed by the Parties, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within 5 Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
- (i) each Party shall, within 5 Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide Notice thereof to the other Party, with a ranking of preference for replacements;
  - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by the Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and

- (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.

## **25. COMMISSIONING AND COMPLETION**

### **25.1 Commissioning Activities**

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

### **25.2 Commencement of Commissioning**

- (a) Project Co shall give 30 days' written Notice to the Independent Certifier and the City Representative of the proposed commencement of the Commissioning Tests.
- (b) Project Co shall give at least 5 Business Days' Notice to, and shall invite, the Independent Certifier and the City Representative to witness, and to comment on, each aspect of the Commissioning. Project Co shall, together with such Notice, provide all information that the Independent Certifier and the City Representative may reasonably require in relation thereto, including:
  - (i) tests proposed;
  - (ii) test methodology; and
  - (iii) expected test results.

### **25.3 Substantial Completion Certificate**

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

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

- (i) the Substantial Completion Certificate, confirming the date of issue as the Substantial Completion Date and setting out the Minor Deficiencies List (if applicable) in accordance with Section 25.7; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.3(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 26 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the City Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Commissioning that needs to be undertaken as a result of the rectification actions,

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

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

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

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

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

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

- (h) The provisions of this Section 25.4 shall repeat, *mutatis mutandis*, until such time as Project Co has achieved Substantial Completion or the Project Agreement has been terminated, whichever is the first to occur.
- (i) The Parties agree that the liquidated damages set out in this Section 25.4 are not a penalty but represent a genuine and reasonable pre-estimate of the damages that will be suffered by the City related to Project Co's failure to comply with and observe the provisions of this Section 25.4.
- (j) Project Co acknowledges and agrees that all liquidated damages set out in this Section 25.4 shall be payable whether or not the City incurs or mitigates these damages, and that the City shall have no obligation to mitigate these damages. Project Co further agrees that it is, and shall be, estopped from alleging that any liquidated damages set out in this Section 25.4 are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages were not incurred.
- (k) In the event that there is a Dispute concerning Substantial Completion and such Dispute is ongoing, the City shall not be entitled to payment of liquidated damages pursuant to this Section 25.4 unless and until such Dispute is resolved in accordance with the Dispute Resolution Procedure outlined in Schedule 26 – Dispute Resolution Procedure and, if resolved in favour of the City, the provisions respecting liquidated damages contained in this Section 25.4 shall apply with retroactive effect, except that there shall be added to the amount payable by Project Co on account of liquidated damages, the Payment Compensation Amount from the date the liquidated damages were required to be paid in the absence of the Dispute to the date of payment.
- (l) Notwithstanding any other provision of this Project Agreement, the payment of the liquidated damages amount pursuant to paragraph 25.4(e) shall not reduce the maximum amount of liability of Project Co as provided for in Section 55.4 of the Project Agreement.

## **25.5 City Commissioning**

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

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

**25.6 [Intentionally Deleted]**

**25.7 Minor Deficiencies**

- (a) In the event that Minor Deficiencies exist when Project Co gives a Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and the City, shall, within 15 Business Days of Project Co's application, prepare a list of all Minor Deficiencies (the "**Minor Deficiencies List**") identified at that time and an estimate of the cost for the City and the time for Project Co to complete and rectify such Minor Deficiencies. The City may withhold from the Substantial Completion Payment a holdback amount that is **[REDACTED]**% of the amount estimated by the Independent Certifier for the City to complete and rectify all Minor Deficiencies (the "**Completion Holdback**"), which holdback shall be held in an interest bearing account.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any lane or track closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the System Infrastructure and the New Municipal Infrastructure or the relevant portion thereof, or disruption of the Project Operations or of the operations of the City, any City Party, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic and Transit Management Plan.
- (c) The Independent Certifier must prepare the Minor Deficiencies List in relation to the Substantial Completion Notice as soon as reasonably practicable and, in any event, before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) No later than 20 Business Days prior to the Anticipated Substantial Completion Date, the City may direct the Independent Certifier to amend, in consultation with Project Co and the City, the Minor Deficiencies List on one occasion to include a list of any and all Minor Deficiencies that were identified after the preparation of, or not included in, the Minor Deficiencies List pursuant to Section 25.7(a). The Independent Certifier shall prepare the amended Minor Deficiencies List as soon as reasonably practicable and, in any event, within 10 Business Days of such direction given by the City. The amended Minor Deficiencies List shall, following its preparation, be deemed to be the Minor Deficiencies List for the purposes of this Project Agreement, including, without limitation, for the purposes of Sections 25.7 to 25.9 inclusive. The amount of the Completion Holdback shall not be affected by the amended Minor Deficiencies List.
- (e) Where the Independent Certifier has been directed by the City to amend the Minor Deficiencies List pursuant to Section 25.7(d), the Independent Certifier shall specify commercially reasonable completion and rectification times for any newly added Minor Deficiencies.

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

## **25.8 Rectification of Minor Deficiencies**

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

## **25.9 Failure to Rectify Minor Deficiencies**

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

### **25.9A Final Completion Countdown Notice**

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

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

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

#### **25.10 Final Completion Certificate**

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

Schedule 26 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the City Representative with:

- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
- (ii) the schedule for completion of all such rectification actions; and
- (iii) any additional Commissioning that needs to be undertaken as a result of the rectification actions,

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

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

#### **25.11 Effect of Certificates/Use**

- (a) The issue of a Substantial Completion Certificate or the Final Completion Certificate, the commencement of use by the City or the public of any part of the System Infrastructure under the terms of this Project Agreement or the commencement of any Governmental Activities shall, in no way:
  - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List or of the amended Minor Deficiencies List described in Section 25.7(d); or
  - (ii) be construed as an approval by the City of the Works or the way in which they have been carried out.

#### **25.12 Post-Completion Survey**

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

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

### **25.13 New Municipal Infrastructure Works**

- (a) Project Co shall achieve all New Municipal Infrastructure Works Acceptances by the Scheduled Substantial Completion Date.
- (b) The City Engineer shall:
  - (i) receive and monitor all drawings, specifications, plans and documents related to the design and development of the New Municipal Infrastructure Works;
  - (ii) receive and monitor all progress reports as necessary for the City Engineer to be in a position to confirm progress and extent of completion of the New Municipal Infrastructure Works;
  - (iii) review and monitor the tests described in Schedule 15 – Output Specifications in respect of the New Municipal Infrastructure Works;
  - (iv) prior to any certification and/or acceptance of New Municipal Infrastructure Works, consider the views and comments of both Project Co and the City in relation to the satisfaction of the conditions for such certification and/or acceptance;
  - (v) conduct inspections and reviews of the New Municipal Infrastructure Works as necessary for the City Engineer to be satisfied that the New Municipal Infrastructure Works are proceeding in accordance with the requirements of the Project Agreement;
  - (vi) review relevant documentation, including the Design Development Submittals relating to New Municipal Infrastructure Works, certificates and approvals, Permits, Licences, Approvals and Authorizations, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules, in each case, relating to New Municipal Infrastructure Works provided to the City Engineer pursuant to this Project Agreement and within the timeframes contemplated for such review within Schedule 10 – Review Procedure; and

- (vii) provide all other services set forth in Schedule 15 – Output Specifications as it relates to the New Municipal Infrastructure Works, in each case, for purposes of enabling the City Engineer to confirm satisfaction of the conditions for issuance of the New Municipal Infrastructure Component Acceptance Certificate for each New Municipal Infrastructure Component and the Final New Municipal Infrastructure Works Acceptance Certificate in relation to all of the New Municipal Infrastructure.
- (c) Project Co shall deliver a notice (a “**New Municipal Infrastructure Works Component Countdown Notice**”) to the City and the City Engineer specifying the date on which Project Co anticipates that New Municipal Infrastructure Component Acceptance will be achieved in respect of such New Municipal Infrastructure Component (the “**Anticipated New Municipal Infrastructure Component Acceptance Date**”). The New Municipal Infrastructure Works Component Countdown Notice shall be delivered not less than 90 days prior to the Anticipated New Municipal Infrastructure Component Acceptance Date. Project Co shall give the City Engineer and the City Representative at least 10 Business Days’ notice prior to the date upon which Project Co anticipates all requirements for New Municipal Infrastructure Component Acceptance shall be satisfied.
- (d) Project Co shall give the City Engineer and the City Representative notice (the “**New Municipal Infrastructure Component Acceptance Notice**”) upon the satisfaction of all requirements of the New Municipal Infrastructure Component Acceptance, together with Project Co’s opinion as to whether the conditions for issuance of the New Municipal Infrastructure Component Acceptance Certificate have been satisfied, and each of the following:
  - (i) to the extent transferable and without prejudice to the City’s rights pursuant to Section 49 and Schedule 35 – Intellectual Property, all copyright licences for computer programs, or licences to use the same, used in connection with the applicable New Municipal Infrastructure Components together with all technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, leases, licence and subletting data and contracts, asset conditions data, standard operating procedures processes and manuals, and all other information related to the New Municipal Infrastructure Works in respect of the applicable New Municipal Infrastructure Component accumulated up until the New Municipal Infrastructure Component Acceptance Date, in each case, in electronic format acceptable to the City, acting reasonably, where it exists in electronic format, and in original format, when not in electronic format;
  - (ii) the most recent Record Drawings relating to the New Municipal Infrastructure Works in the format that the City, acting reasonably, considers most appropriate at the time;
  - (iii) copies of all test results performed and test reports prepared in accordance with Schedule 15, together with all Project Co Permits, Licences, Approvals and Authorizations obtained and/or entered into in connection with the New Municipal Infrastructure Works in PDF or CADD format;
  - (iv) all Project Data and Intellectual Property relating to the design, construction and completion of the New Municipal Infrastructure Component; and

- (v) all information, reports, documents, records and the like referred to in the Project Agreement as it relates to New Municipal Infrastructure Works including as referred to in Schedule 25 – Record Provisions, in each case as it relates to New Municipal Infrastructure and New Municipal Infrastructure Works only;

(collectively, the “**New Municipal Infrastructure Component Works Requirements**”).

Within 10 Business Days after receipt of a New Municipal Infrastructure Component Acceptance Notice, the City Engineer shall determine whether the conditions for issuance of the New Municipal Infrastructure Component Acceptance Certificate have been satisfied and to issue to the City and Project Co either:

- (A) the New Municipal Infrastructure Component Acceptance Certificate, setting out in such certificate the New Municipal Infrastructure Component Acceptance Date; or
  - (B) a report detailing the matters that the City Engineer considers are required to be performed by Project Co to satisfy the conditions for issuance of the New Municipal Infrastructure Component Acceptance Certificate.
- (e) Where the City Engineer has issued a report in accordance with Section 25.13(d)(vi)(B) above, Project Co shall, within 5 Business Days after receipt of such report, provide the City Engineer and the City Representative with:
    - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
    - (ii) the schedule for completion of all such rectification actions; and
    - (iii) any additional tests that need to be undertaken in respect of the New Municipal Infrastructure Works as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and testing in a timely manner. Upon completion thereof, Project Co may give a further New Municipal Infrastructure Component Acceptance Notice and Section 25.13(c) to (e) inclusive shall be repeated until the New Municipal Infrastructure Component Acceptance Certificate has been issued.

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

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

- (g) On each New Municipal Infrastructure Component Acceptance Date in respect of each New Municipal Infrastructure Component:
- (i) Project Co shall cooperate fully with the City and any persons providing services on or at the New Municipal Infrastructure Components in order to avoid or mitigate, insofar as commercially reasonable, any inconvenience or any risk to the health and safety of any person at, on or under the Lands on which the New Municipal Infrastructure Works are or were performed, including those areas where any warranty work is or has been performed;
  - (ii) insofar as title to the New Municipal Infrastructure Components shall not have already passed to the City pursuant to Section 53.1, Project Co shall transfer to, and there shall vest in the City, free from all Encumbrances (other than the Encumbrances caused or consented to by the City), the New Municipal Infrastructure Components;
  - (iii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to the City, free from all Encumbrances (other than any Encumbrances caused or consented to by the City), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement which is included in the New Municipal Infrastructure Components; and
  - (iv) subject to Section 49 and Schedule 35 - Intellectual Property, all information obtained by Project Co in connection with the New Municipal Infrastructure Works relating to the applicable New Municipal Infrastructure Components, including Record Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, lease, licence and subletting data and contracts, asset conditions data, standard operating procedure, processes and manuals, and all other information directly related to the New Municipal Infrastructure Works relating to the applicable New Municipal Infrastructure Component accumulated over the course of the Project Term shall be the property of the City;
- (h) Subject to the warranty obligations described below, the issuance by the City Engineer in accordance with Section 25.13(d) of the New Municipal Infrastructure Component Acceptance

Certificate in respect of any New Municipal Infrastructure Component shall result in the responsibility for traffic management, maintenance, repair of the New Municipal Infrastructure Component described in such New Municipal Infrastructure Component Acceptance Certificate reverting back to the City.

- (i) After all final New Municipal Infrastructure Component Acceptance Certificates for all New Municipal Infrastructure Components have been delivered by the City Engineer to Project Co, Project Co shall deliver a notice to the City Engineer requesting delivery of the Final New Municipal Infrastructure Works Acceptance Certificate. Upon satisfaction of all conditions to complete the New Municipal Infrastructure Works and achievement of New Municipal Infrastructure Works Acceptance, the City Engineer shall deliver to Project Co the Final New Municipal Infrastructure Works Acceptance Certificate.
- (j) Project Co shall deliver to the City and the City Engineer the following, in each case, in form and substance satisfactory to the City and the City Engineer, acting reasonably, in order to be eligible to receive the Final New Municipal Infrastructure Works Acceptance Certificate one complete set of the New Municipal Infrastructure Component Works Requirements divided up in separate packages for each New Municipal Infrastructure Component (i) showing all alterations made to the New Municipal Infrastructure Works since the New Municipal Infrastructure Component Acceptance Date in respect of each New Municipal Infrastructure Component and (ii) including updates and additions to any of the New Municipal Infrastructure Works Requirements since the New Municipal Infrastructure Component Acceptance Date (the “**Final New Municipal Infrastructure Works Requirements**”).

#### **25.14 Warranties on New Municipal Infrastructure**

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

**25.15 Interim Substantial Completion**

(a) In the event that either:

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

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

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

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

## 26. MAINTENANCE AND REHABILITATION SERVICES

### 26.1 Overall Responsibility

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

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

## **26.2 Commencement of Maintenance and Rehabilitation Services**

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

## **26.3 Equipment for Maintenance and Rehabilitation Services**

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

## **26.4 No Closure of the System Infrastructure**

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

## **26.5 Maintenance Plans**

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

## **26.6 Revisions to Maintenance Plan**

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

## **27. HUMAN RESOURCES**

### **27.1 Admittance of Personnel**

- (a) The City shall have the right to order the removal from the Lands, the System Infrastructure and the New Municipal Infrastructure of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of the City is likely to have an adverse effect on the Other Works or the Governmental Activities or who, in the reasonable opinion of the City is not a fit and proper person to be at the Lands, the System Infrastructure and the New Municipal Infrastructure for any reason, including a failure to comply with any City policy or any immediate obligation of the City to ensure the safety and well-being of persons at the Lands, the System Infrastructure and the New Municipal Infrastructure.

**27.2 Confirmation of Action**

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

**27.3 Finality as to Admission**

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

**27.4 Staff Competency**

- (a) Project Co shall ensure that:
- (i) there shall at all times be a sufficient number of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the performance of the Project Operations with the requisite level of skill and experience to perform the Project Operations in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Project Co or any Project Co Party to complete the Works in accordance with the Works Schedule and to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in the Maintenance and Rehabilitation Services;
  - (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Operations receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements, Authority Requirements and the City HR Policy; and
  - (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Operations to ensure the proper performance of this Project Agreement.

**27.5 Employee Training**

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

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

## **27.6 Convictions**

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause such Project Co Party to, ensure that all potential employees (including, for greater certainty, permanent, temporary, full time and part time employees) and persons who may otherwise perform the Maintenance and Rehabilitation Services:
  - (i) are questioned concerning Relevant Convictions; and
  - (ii) are required to complete and deliver to Project Co a criminal records search form.
- (b) To the extent permitted by Applicable Law, Project Co shall, and shall cause each Project Co Party to, ensure that no person who discloses any Relevant Conviction, or who is found to have any Relevant Conviction following the completion of a criminal records search, in either case of which Project Co or a Project Co Party is aware or ought to be aware, is allowed access to the Lands, the System Infrastructure or the New Municipal Infrastructure to perform any Maintenance and Rehabilitation Services, without the prior written consent of the City, in its sole discretion.
- (c) To the extent permitted by Applicable Law, Project Co shall ensure that the City is kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Maintenance and Rehabilitation Services who, subsequent to the commencement of such employment or engagement, (i) has been arrested or detained; (ii) receives a Relevant Conviction; or (iii) is charged with an offence that could lead to a Relevant Conviction (of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party). Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to the City as contemplated in this Section 27.6.

## **27.7 Disciplinary Action**

- (a) The City, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Lands or at work is otherwise considered by the City to be undesirable, to constitute a threat to the health and/or safety of any of the users of the Lands and/or System Users or which the City considers may potentially compromise (i) the City's reputation or integrity, or (ii) the nature of the public transit system in the City of Ottawa so as to affect public confidence in the public transit system in the City of Ottawa or the Project. Upon

investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise the City in writing of the outcome of any disciplinary action taken in respect of such person.

#### **27.8 Human Resources Policies**

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

#### **27.9 Management Organizations**

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

#### **27.10 Governmental Authority**

- (a) Project Co shall ensure that it and all Project Co Parties comply at all times with any regulations, policies or directions set by any Governmental Authority related to labour, employment and/or human resources.

### **28. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS**

#### **28.1 Standards**

- (a) Project Co shall cause the goods, equipment, consumables and materials used or supplied by it or any Contractor or Subcontractor in connection with the Project Operations to be:
  - (i) of good quality, fit for their intended purpose (other than to the extent a specific type of good, equipment, consumable or material is specified in the Output Specifications) and maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice;
  - (ii) of the type specified in the Output Specifications, if applicable; and
  - (iii) in compliance with all Applicable Law,

and shall, as soon as practicable after receiving a request from the City Representative, supply to the City Representative evidence to demonstrate its compliance with this Section 28.1(a).

#### **28.2 Stocks**

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

## **29. DAMAGE AND DESTRUCTION**

### **29.1 Restoration and Reinstatement of Damage or Destruction**

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

Project Co shall, at its own cost and expense, Make Good and repair and replace the property of the City on the Site for which Project Co is responsible pursuant to (a) above, the property adjacent to the Site for which Project Co is responsible pursuant to in (a) above, the relevant New Municipal Infrastructure Component or the System Infrastructure or any part thereof, as applicable, (the "**Reinstatement Work**") promptly and in any event as soon as practicable in the circumstances. Except as otherwise expressly provided in this Project Agreement, damage to or destruction of all or any part of the System Infrastructure or the New Municipal Infrastructure shall not terminate this Project Agreement or relieve Project Co of any of its obligations hereunder or entitle Project Co to any compensation from the City.

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

### **29.2 Reinstatement Plan**

- (a) If the Reinstatement Work in respect of the System Infrastructure or New Municipal Infrastructure is reasonably estimated to cost more than \$[REDACTED] (index linked) or in any other case where the City Representative, having regard to the nature of the damage or destruction, notifies Project Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Final Completion Date and the City Representative acting reasonably considers that the continued application of the Design and Construction Certification Procedure would be able to adequately address the Reinstatement Work without the

need for a separate Reinstatement Plan), Project Co shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the City Representative, as the case may be, (or if, with the exercise of all due diligence more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the City Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided Project Co exercises and continues to exercise all such due diligence) submit to the City Representative pursuant to Schedule 10 - Review Procedure a plan (a “**Reinstatement Plan**”) prepared by Project Co for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:

- (i) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction;
- (ii) Project Co’s proposed schedule for the execution of the Reinstatement Work; and
- (iii) the information required pursuant to Schedule 21 - Variations as if such plan were an Estimate;

and the Reinstatement Work must not be commenced until the City Representative consents thereto in accordance with Schedule 10 - Review Procedure except to the extent necessary to address any Emergency or public safety needs.

### **29.3 Conduct of Reinstatement Work**

- (a) Project Co shall cause the Reinstatement Work in respect of the System Infrastructure or New Municipal Infrastructure to be carried out in accordance with the Output Specifications and all other applicable requirements under this Project Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the City Representative in accordance with Schedule 10 - Review Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Construction Certification Procedure. If requested by the City Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to the City) retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a construction contract with Project Co and a direct agreement with the City in substantially the same forms as the Construction Contract and the Construction Contractor’s Direct Agreement.
- (b) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 28 - Insurance Trust Agreement are available to carry out the Reinstatement Work in respect of the System Infrastructure or New Municipal Infrastructure, such Insurance Proceeds shall be paid into the Insurance Trust Account and shall be dispensed in accordance with the provisions of the Insurance Trust Agreement to carry out the Reinstatement Work.

## **30. MONITORING AND PERFORMANCE AUDITS**

### **30.1 Performance Audits**

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

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

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

### **30.2 Monitoring of Performance**

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

### **30.3 Failure Points**

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

### **30.4 Warning Notices**

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

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

### **30.5 Monitoring Notices**

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

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

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

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

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

## **31. CITY'S REMEDIAL RIGHTS**

### **31.1 Exercise of Remedial Rights**

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

provided that:

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

- (vii) Project Co has failed to comply with any written direction issued by or on behalf of the City.
- (viii) Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to its COR Certification or OHSAS 18001 Accreditation, as the case may be, in accordance with Section 9.6, or Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to H&S Construction Inspections in accordance with Section 13(b), or to perform its obligations to rectify any non-compliance noted in any H&S Construction Inspection Report in accordance with Section 13(e).
- (ix) Project Co has not caused the COR-Qualified Maintenance Project Co Party or the ISO 45001 Certified Maintenance and Rehabilitation Project Co Party, as the case may be, to perform its obligations with respect to its COR Certification in accordance with Section 9.6, or Project Co has not caused the COR-Qualified Maintenance Project Co Party or the ISO 45001 Certified Maintenance and Rehabilitation Project Co Party, as the case may be, to perform its obligations with respect to H&S Maintenance Inspections in accordance with Section 13(b), or to perform its obligations to rectify any non-compliance noted in any H&S Maintenance Inspection Report in accordance with Section 13(e).

### **31.2 Emergency**

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, the City may exercise all of the rights set out in this Section 31 at any time and from time to time during the Maintenance Period if the City, acting reasonably, considers the circumstances to constitute an Emergency.

### **31.3 Rectification**

- (a) Without prejudice to the City's rights under Section 43 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 31.1 or 31.2, the City may, by written Notice, require Project Co to take such steps as the City, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors or a limited suspension of the performance of the Works, and Project Co shall use commercially reasonable efforts to comply with the City's requirements as soon as reasonably practicable.
- (b) If the City gives Notice to Project Co pursuant to Section 31.3(a) and either:
  - (i) Project Co does not either confirm, within 5 Business Days of such Notice or such shorter period as is appropriate in the case of an Emergency or in the event the City is entitled to exercise step-in rights under the Maintenance and Rehabilitation Contractor's Direct Agreement that it is willing to take the steps required in such Notice or present an alternative plan to the City to mitigate, rectify and protect against such circumstances that the City may accept or reject acting reasonably; or

- (ii) Project Co fails to take the steps required in such Notice or accepted alternative plan within such time as set out in such Notice or accepted alternative plan or within such longer time as the City, acting reasonably, shall think fit,

then the City may take such steps as it considers to be appropriate, acting reasonably, including, if applicable, exercising step-in rights under the Maintenance and Rehabilitation Contractor's Direct Agreement and requiring the termination and replacement of Subcontractors, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Maintenance and Rehabilitation Services to the standards required by this Project Agreement, and the provisions of Section 40, including Section 40.1(a)(iv) and Section 40.1(a)(x), shall apply.

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

#### **31.4 Costs and Expenses**

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

### **31.5 Reimbursement Events**

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

### **31.6 Reimbursement if Improper Exercise of Rights**

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

**32. PAYMENT**

**32.1 Construction Period Payments**

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

**32.2 Monthly Service Payments**

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

**32.3 Payment Adjustments**

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

**32.4 Payment Commencement**

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

**32.5 Adjustments to Payment Periods**

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

**32.6 Invoicing and Payment Arrangements**

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

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

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

### **32.7 Electronic Invoicing**

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

### **32.8 Final Payment Periods**

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

### **32.9 Disputes**

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

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

### **32.10 Payments**

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

### **32.11 Manner of Payment**

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

### **32.12 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
  - (i) the City to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement (other than any Construction Period Payment and Unpaid Construction Period Payments), any amounts (including any amounts payable in accordance with Section 54) that are due to the City by Project Co pursuant to the terms of this Project Agreement; and
  - (ii) Project Co to set off against any amounts otherwise due to the City pursuant to the terms of this Project Agreement, any amounts (including any amounts payable in accordance with Section 54) that are due to Project Co by the City pursuant to the terms of this Project Agreement.

### **32.13 Effect of Payment**

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

**32.14 Audit of Performance and Payment**

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

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

**32.15 No Other Entitlement**

- (a) Project Co shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Project Agreement, except as specifically and expressly set out in this Project Agreement

**33. TAXES**

**33.1 Taxes**

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law. For clarity, the City shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any such HST from the City, the City shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.
- (b) The City shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Lands, the System Infrastructure and the New Municipal Infrastructure.
- (c) The City shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by the City upon and in connection with payments by the City to Project Co under this Project Agreement. For greater certainty, the Parties agree that the conditions set out in paragraph 168(3)(c) of the *Excise Tax Act* (Canada) are not satisfied at the time of Substantial Completion hereunder and, unless otherwise required by Applicable Law, any HST payable by the City hereunder shall be calculated solely by reference to the amount of the payment, without any deductions or adjustments on account of paragraph 168(3)(c) of the *Excise Tax Act* (Canada).

**33.2 Changes in Scope of Taxation**

- (a) If, as a result of a Change in Law, the application of Taxes under Part IX of the *Excise Tax Act* (Canada) or any provincial sales tax legislation changes with respect to the provision of any goods or services by Project Co in connection with the performance of the Works, the City and Project Co agree to cooperate to determine how such change affects their respective obligations under this Project Agreement to the extent not already addressed in this Project Agreement.

**33.3 Changes in Recoverability of Tax Credits**

- (a) The City will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to the City from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.

- (b) For the purposes of this Section 33.3, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to the City which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.
- (c) For the purposes of this Section 33.3, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to the City which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

### **33.4 Information and Assistance Provided by Project Co**

- (a) Project Co shall, at the City’s request and cost, assist the City in applying for and obtaining all remissions and credits of Taxes to which the City is entitled.
- (b) The City may apply for a global or general exemption, waiver, remission, or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement. Project Co shall, at the City’s cost, assist the City in making any applications for such global or general exemption, waiver, remission or refund and shall provide the City with such documentation as the City may reasonably require to support such application and, in any event, shall provide such consent as the City may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by the City through such application shall accrue to the sole benefit of the City.
- (c) Project Co will provide the City with any information reasonably requested by the City from time to time in relation to any Taxes chargeable in accordance with this Project Agreement and payable by the City to Project Co from time to time.

### **33.5 Residency – *Income Tax Act (Canada)***

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

### **33.6 Taxes – General**

- (a) Project Co shall not, without the prior written consent of the City (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause the City or any the City Party to have (or result in the City or any City Party having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Project Agreement or under any other Project Document.

### **33.7 Taxes – Indemnity**

- (a) If:

- (i) Project Co becomes a Non-Resident, or
- (ii) The City or any City Party are or become required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by the City or any City Party under this Project Agreement or under any of the Project Documents,

then the City or any City Party shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which:

- (iii) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or
- (iv) the City or any City Party are required by Applicable Law to deduct or withhold amounts in respect of any such amounts,

in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by the City or any City Party under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

(b) If:

- (i) Project Co becomes a Non-Resident, or
- (ii) the City or any City Party are or become required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by the City or any City Party under this Project Agreement or under any of the Project Documents,

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

- (iii) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by the City or any City Party in respect of any amounts paid or credited by the City or any City Party to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by the City or any City Party in respect of such Taxes, and
- (iv) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”).

Payment under this indemnification shall be made within 30 days from the date the City makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by the City shall be conclusive evidence, absent manifest error, of the amount due from Project Co to the City. The City shall be entitled to exercise its rights of set-off under Section 32.12 against any amounts owing under this indemnification. In the event that it is finally determined that such Indemnifiable Taxes were not correctly or legally asserted or remitted, then such Indemnifiable Taxes shall be reimbursed to Project Co following such final determination.

## **34. FINANCIAL MODEL**

### **34.1 Appointment of Custodian**

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

### **34.2 Delivery and Use of Financial Model**

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

## **35. RECORDS, INFORMATION AND AUDIT**

### **35.1 Records Provisions**

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

### **35.2 Information and General Audit Rights**

- (a) Project Co shall provide and shall cause each Subcontractor to provide to the City all information, reports, documents, records and the like, including as referred to in Schedule 25 - Record Provisions, in the possession of, or available to, Project Co as the City may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Contractors shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to the City, and shall require each Subcontractor, including the Contractors, to provide to the City (at the City's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 35.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as the City may reasonably require from time to time to enable the City to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the System Infrastructure and the New Municipal Infrastructure, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide the City with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Project Operations or the System Infrastructure and the New Municipal Infrastructure, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify the City of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 25 - Record Provisions, which are required to be provided to or available to the City hereunder, shall be subject and open to inspection and audit by the City at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless the City and Project Co otherwise agree. The City shall also have the right to monitor and audit the performance of any and all parts of the Project Operations wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of the City monitoring and auditing such parts of the Project Operations, including providing it with access and copies (at the City's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Project Operations. Except as otherwise provided herein, all of the City's costs for the inspections, audits and monitoring shall be borne by the City.

- (f) In conducting an audit of Project Co under Section 35.2(e) or as otherwise provided under this Project Agreement, the City shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at the City's reasonable cost) of all books and records of Project Co required to be provided to or available to the City hereunder, upon reasonable Notice and at reasonable times. Project Co shall fully cooperate with the City and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with the City all matters arising from such audits, including the refunding of monies to the City where applicable. At the reasonable request of the City's auditors, Project Co shall provide such information, reports, documents and records as the City's auditors may reasonably require, other than Sensitive Information.
- (g) The City's rights pursuant to this Section 35.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) The City's rights pursuant to this Section 35.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law. The City's right pursuant to this Section 35.2 may also be exercised by the Auditor General of Ontario, Her Majesty the Queen in right of Canada and the Auditor General of Canada without the requirement for further action on the part of the City.
- (i) Without limiting the generality of Section 35.2(a) and subject to Section 50.1(a) and 50.3, in the event that the City is required to provide information, including financial information, in relation to the Project, to the Province for corporate or financial reporting purposes, Project Co shall provide such information to the City as the City may reasonably require in order to comply with its corporate or financial reporting obligations. Project Co acknowledges and agrees that such information may include Sensitive Information.

### **35.3 Delivery of Reports to the City**

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

### **35.4 Lenders' Consultant Reports**

- (a) Project Co shall cause the Lenders' Agent to cause, in accordance with Section 5(j) of Schedule 41 – Lenders' Direct Agreement, the Lenders' Consultant to provide the City a copy of any written assessment or report of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent.

## **36. CHANGES IN LAW**

### **36.1 Performance after Change in Law**

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

### **36.2 Works Change in Law**

- (a) On the occurrence of a Works Change in Law:
- (i) either Party may give Notice to the other of the need for a Variation as a result of such Works Change in Law;
  - (ii) the Parties shall meet within 10 Business Days of such Notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 26 – Dispute Resolution Procedure; and
  - (iii) the City shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 21 - Variation Procedure shall apply except that:
    - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
    - (B) Project Co shall be responsible for obtaining all Project Co Permits, Licences, Approvals and Authorizations required in respect of the Variation;
    - (C) the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
    - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
    - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 21 - Variation Procedure.

### **36.3 Relevant Change in Law**

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 36.3.

- (b) On the occurrence of a Relevant Change in Law:
- (i) either Party may give Notice to the other of the need for a Variation as a result of such Relevant Change in Law;
  - (ii) the Parties shall meet within 10 Business Days of such Notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 26 - Dispute Resolution Procedure; and
  - (iii) the City shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 21 - Variation Procedure shall apply except that:
    - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
    - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Authorizations required in respect of the Variation;
    - (C) the City shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
    - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
    - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
      - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
      - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
    - (F) any entitlement to compensation payable shall be in accordance with this Section 36.3, and any calculation of compensation shall take into consideration, *inter alia*:

- (I) any failure by a Party to comply with Section 36.3(b)(iii)(E);
  - (II) the extent to which a Party has been, or shall be, compensated in respect of such Relevant Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Project Agreement;
  - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
  - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 38 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 36.3, and Section 39 shall be construed accordingly.

## **37. VARIATIONS**

### **37.1 Variation Procedure**

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

### **37.2 Innovation and Value Engineering**

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

Services, and Project Co agrees to cooperate, explore and work with the City in investigating and considering innovation and value engineering and other cost saving measures.

- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by Notice to the City.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
  - (i) any Variation Enquiry initiated by the City;
  - (ii) any Variation resulting from a Change in Law; or
  - (iii) any change to City Activities.
- (d) The Innovation Proposal must:
  - (i) set out sufficient detail to enable the City to evaluate the Innovation Proposal in full;
  - (ii) specify Project Co’s reasons and justification for proposing the Innovation Proposal;
  - (iii) request the City to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes the City requires as a result;
  - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and the City;
  - (v) indicate, in particular, whether an increase or decrease to the Monthly Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
  - (vi) indicate if there are any dates by which a decision by the City must be made;
  - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
  - (viii) include such other information and documentation as may be reasonably requested by the City to fully evaluate and consider the Innovation Proposal.
- (e) The City shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
  - (i) a change in the Monthly Service Payments will occur;
  - (ii) the Innovation Proposal affects the quality of the Works, the Maintenance and Rehabilitation Services, or the likelihood of successful completion of the Works or performance of the Maintenance and Rehabilitation Services;

- (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the System Infrastructure, the New Municipal Infrastructure or the performance of the City Activities;
  - (iv) the Innovation Proposal will interfere with the relationship between the City and third parties;
  - (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Maintenance and Rehabilitation Services, as applicable;
  - (vi) the residual value of the System Infrastructure or the New Municipal Infrastructure is affected;
  - (vii) the Innovation Proposal will change the Monthly Service Payment;
  - (viii) the Innovation Proposal materially affects the risks or costs to which the City is exposed; or
  - (ix) any other matter the City considers relevant.
- (f) The City may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) The City may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If the City accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) Unless the City specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 37.2(h), there shall be no increase in the Monthly Service Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and the City, and the City's share of the net savings shall, as agreed by the Parties, be reflected in either a lump sum payment or in a reduction of the Monthly Service Payments.
- (k) If an Innovation Proposal causes or will cause the costs of the City to decrease, the net savings in the costs of the City will be shared as follows:
- (i) equally by Project Co and the City for the first 5 years following the implementation of the Innovation Proposal; and

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

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

## **38. DELAY EVENTS**

### **38.1 Definition**

- (a) For the purposes of this Project Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that it affects the Works so as to cause a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date:
  - (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
  - (ii) any breach by the City of any of the City's obligations under this Project Agreement (including any delay by the City in giving access to the Lands pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, or any delay by the City in carrying out its obligations set forth in Schedule 10 - Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
  - (iii) an uncovering of the Works pursuant to Section 21.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such uncovering of the Works was reasonable in the light of other defects or non-compliance previously discovered by the City in respect of the same or a similar component of the Works or subset of the Works;
  - (iv) a requirement pursuant to Section 16.2(h)(i) and Section 16.2(g) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
  - (v) a requirement pursuant to Sections 16.3(c)(ii)(A) or 16.3(d) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
  - (vi) a requirement pursuant to Sections 16.4(b) or 16.4(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or

delay performance of the Works, upon the discovery of Species-at-Risk for which the City is responsible, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;

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

Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;

- (xix) a requirement for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, as a result of error in the Geotechnical Report;
  - (xx) subject to compliance with Section 9.4(g), the City's failure to issue to Project Co a final determination in respect of a Listed Project Co PLAA as set out and subject to Section 9.4;
  - (xxi) pursuant to an explicit provision in a permit, licence or approval granted by the City to a third party developer in respect of an Adjacent Development, that third party developer,
    - (A) constructs a physical barrier that prevents Project Co from carrying out the Works or any of the Maintenance and Rehabilitation Services; or
    - (B) creates a significant physical impediment that prevents Project Co from carrying out the Works;
  - (xxii) failure by a Category 1 Utility Company to perform its obligations, as set out in the Utility Baseline Report within the applicable time periods set out in the Utility Baseline Report, to the extent that such event does not arise (directly or indirectly) as a result of any act or omission of the Project Co or any Project Co Party. For clarity, for the purposes of determining whether a failure of a Category 1 Utility Company described in this Section 38.1(a)(xxii) has caused a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, or a delay in achieving Final Completion by the Scheduled Final Completion Date, the Parties shall have regard to the cumulative effect of all failures by the Category 1 Utility Company in accordance with this Section 38.1(a)(xxii).
- (b) For clarity, in respect of Section 38.1(a)(xxii), a failure by a Category 1 Utility Company to perform its obligations as set out in the Utility Baseline Report within the applicable time periods set out in the Utility Baseline Report shall not, in any event, be cause for a Delay Event unless Project Co has,
- (i) fully complied with its obligations pursuant to the applicable Utility Agreement and the Baseline Utility Report;
  - (ii) properly coordinated the work being performed by the applicable Category 1 Utility Company with the Works; and
  - (iii) provided sufficient access to Site to the applicable Category 1 Utility Company for the purposes of carrying out the Category 1 Utility Company's work.
- (c) For further clarity, Section 38.1(a)(xxii) does not apply in respect of,
- (i) Category 1 Utility Companies in circumstances other than those specifically set out in the Utility Baseline Report;

- (ii) failures of any Utility Companies that are not Category 1 Utility Companies including failures of such Utility Companies to perform in accordance with the applicable Utility Agreement; or
- (iii) Works carried out by Project Co or Project Co Parties or goods or services provided by Project Co or Project Co Parties to the Utility Companies.

### **38.2 Consequences of a Delay Event**

- (a) Project Co shall provide written Notice to the City Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of any event or circumstances described in Sections 38.1(a)(ii), 38.1(a)(iv), 38.1(a)(v), 38.1(a)(vi), 38.1(a)(vii), 38.1(a)(xii), 38.1(a)(xiii), 38.1(a)(xiv), 38.1(a)(xv), 38.1(a)(xvi), 38.1(a)(xvii), 38.1(a)(xviii), 38.1(a)(xix), 38.1(a)(xx), 38.1(a)(xxi), or 38.1(a)(xxii) which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for relief under Section 38.2(e) as a Delay Event (a “**Notice of Pending Claim**”).
- (b) Project Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 38.2(a), provide further written details to the City Representative and the Independent Certifier which shall include:
  - (i) identification of the category of Delay Event on which Project Co’s future claim for relief would be based if such event or circumstances were to form the basis of a claim for relief as a Delay Event;
  - (ii) details of the event or circumstances forming the basis of Project Co’s notification under Section 38.2(a);
  - (iii) details of the contemporary records which Project Co shall thereafter maintain to substantiate its claim for extra time if the event or circumstances detailed in accordance with Section 38.2(b)(ii) forms the basis of a future claim by Project Co for relief as a Delay Event;
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon the Scheduled Substantial Completion Date, if such event or circumstances forms the basis of a future claim by Project Co for relief as a Delay Event; and
  - (v) details of any measures that Project Co proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Project Co for relief as a Delay Event or to mitigate the consequences of such claim if such event or circumstances were to become a Delay Event.
- (c) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 38.2(a), Project Co shall submit further particulars based on such information to the City Representative and the Independent Certifier.

- (d) The City Representative shall, after receipt of written details under Section 38.2(b), or of further particulars under Section 38.2(c), be entitled by written notice to require Project Co to provide such further supporting particulars as the City Representative may reasonably consider necessary. Project Co shall afford the City Representative and the Independent Certifier reasonable facilities for their investigations, including, without limitation, on-site inspection.
- (e) In addition to complying with its obligations under Sections 38.2(a) and 38.2(b), Project Co shall provide written notice to the City Representative and the Independent Certifier within 5 Business Days of: (A) becoming aware that an event or circumstances has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of Delay Event, or (B) becoming aware of the occurrence of an event to which Section 38.2(k) applies. Project Co shall, within 10 Business Days after such notification, provide further written details of the Delay Event or the event to which Section 38.2(k) applies to the City Representative and the Independent Certifier, including, if and as applicable, to substitute or supplement the information given in Sections 38.2(a), 38.2(b) and 38.2(c), to further substantiate or support Project Co's claim which shall include, to the extent not previously provided:
- (i) a statement of which Delay Event (or event pursuant to Section 38.2(k)) upon which the claim is based;
  - (ii) details of the circumstances from which the Delay Event (or event pursuant to Section 38.2(k)) arises;
  - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time or pursuant to Section 38.2(k);
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date, including a Critical Path analysis of the event or circumstance indicating the impact on the Scheduled Substantial Completion Date; and
  - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event or event pursuant to Section 38.2(k).
- (f) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 38.2(e), Project Co shall submit further particulars based on such information to the City Representative and the Independent Certifier.
- (g) The City Representative shall, after receipt of written details under Section 38.2(e), or of further particulars under Section 38.2(f), be entitled by written Notice to require Project Co to provide such further supporting particulars as the City Representative may reasonably consider necessary. Project Co shall afford the City Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (h) Subject to the provisions of this Section 38, the City Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised Scheduled

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

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

then Project Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.

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

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

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

### **38.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by a Delay Event or an event pursuant to Section 38.2(k), Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
  - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
  - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event or event pursuant to Section 38.2(k); and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event (or event pursuant to Section 38.2(k)) as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 38.3, such failure shall be taken into account in determining,

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

### **39. COMPENSATION EVENTS**

#### **39.1 Definition**

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

#### **39.2 Consequences of a Compensation Event**

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 39. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
  - (i) Schedule 21 - Variation Procedure, in the case of a Delay Event referred to in Section 38.1(a)(i);
  - (ii) Section 42, in the case of a Delay Event referred to in Section 38.1(a)(ix);
  - (iii) Section 41, in the case of a Delay Event referred to in Section 38.1(a)(x); and
  - (iv) Section 36.3, in the case of a Delay Event referred to in Section 38.1(a)(xi).
- (b) Subject to Sections 39.3 and 39.4, if it is agreed, or determined in accordance with Schedule 26 - Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by the City to Project Co. Project Co shall promptly provide the City Representative with any information the City Representative may require in order to determine the amount of such compensation.
- (c) If the City is required to compensate Project Co pursuant to this Section 39.2, then the City may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, the City may request Project Co to agree to an adjustment to the Monthly Service Payments. If Project Co agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 21 - Variation Procedure shall apply.
- (d) To the extent that Project Co does not comply with its obligations under Sections 38.2(a), 38.2(b), 38.2(c), 38.2(d), 38.2(e), 38.2(f), 38.2(g) or 38.2(m), and subject to Section 38.2(m), such failure

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

### **39.3 Mitigation**

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

### **39.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 39 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

### **39.5 Delivery of PBS-2**

- (a) If an event referred to in Sections 38.1(a)(iii), 38.1(a)(iv), 38.1(a)(v), 38.1(a)(vi), 38.1(a)(vii), 38.1(a)(viii) or 38.1(a)(xv) occurs after the date that is 150 days following Financial Close as such date may be extended in accordance with Section 38.2(h) and prior to the City assigning the comment "NO COMMENT" or "MINOR COMMENT" to PBS-2 in accordance with Schedule 12 – Works Scheduling Requirements, Project Co shall not be entitled to receive any compensation under this Section 39 in respect of such Compensation Event unless such Compensation Event is also a Delay Event, in which case Project Co shall be entitled to compensation in an amount equal to the lesser of:
  - (i) the Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay; and
  - (ii) the compensation which, but for the application of this Section 39.5, Project Co would have been entitled to pursuant to Section 39.2(b).

### **39.6 Special Compensation Regarding Category 1 Utility Company**

- (a) For the purposes of the special compensation regarding Category 1 Utility Companies, the following shall apply:
  - (i) Sections 39.3 and 39.4 shall apply to the compensation set out in this Section 39.6 notwithstanding that the Delay Event referred to in Section 38.1(a)(xxii) is not a Compensation Event;

- (b) If it is agreed, or determined in accordance with Schedule 26 - Dispute Resolution Procedure, that there has been a Delay Event referred to in Section 38.1(a)(xxii), Project Co shall be entitled to the following:
- (i) an amount calculated in accordance with the following:
- (A) For the purpose of this Section 39.6(b)(i), “**Non-Debt Compensation Amount**” means an amount that would place Project Co in no better and no worse position than it would have been in had the applicable Delay Event referred to in Section 38.1(a)(xxii) not occurred but excluding any interest or financing costs accrued and paid or which became payable in accordance with the Lending Agreements during the period of the applicable Delay Event (such excluded amount, the “**Special Utility Debt Compensation Amount**”);
- (B) If the applicable Delay Event delays any Substantial Completion for 30 or fewer days, the City shall pay to Project Co an amount equal to [REDACTED] per cent of the Non-Debt Compensation Amount and [REDACTED] per cent of the Special Utility Debt Compensation Amount for the period of the delay;
- (C) If the applicable Delay Event delays any Substantial Completion for 60 or fewer days, the City shall pay to Project Co an amount equal to,
- (I) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the first 30 days of the delay, plus,
- (II) [REDACTED] per cent of the Non-Debt Compensation Amount for the number of days of delay exceeding 30 days of delay; plus
- (III) [REDACTED] per cent of the Special Utility Debt Compensation Amount for the period of the delay.
- (D) If the applicable Delay Event delays any Substantial Completion for 180 or fewer days, the City shall pay to Project Co an amount equal to,
- (I) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the first 30 days of delay, plus,
- (II) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the next 30 days of delay, plus,
- (III) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the number of days exceeding 60 days of delay; plus
- (IV) [REDACTED] per cent of the Special Utility Debt Compensation Amount for the period of the delay.
- (E) If the applicable Delay Event delays any Substantial Completion for more than 180 days, the City shall pay to Project Co an amount equal to,

- (I) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the first 30 days of delay, plus,
- (II) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the next 30 days of delay, plus,
- (III) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the number of days exceeding 120 days of delay, plus,
- (IV) [REDACTED] per cent of the Non-Debt Compensation Amount in respect of the number of days exceeding 180 days of delay, plus,
- (V) [REDACTED] per cent of the Special Utility Debt Compensation Amount for the period of the delay.

#### 40. EXCUSING CAUSES

##### 40.1 Definition

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

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

#### **40.2 Consequences of an Excusing Cause**

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 40.3 and 40.4):
- (i) any failure by Project Co to perform, and any poor performance of, any affected Maintenance and Rehabilitation Services shall not constitute a breach of this Project Agreement by Project Co, no Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such Maintenance and Rehabilitation Services for the duration and to the extent prevented by such Excusing Cause;
  - (ii) any interference shall be taken into account in measuring the performance of any affected Maintenance and Rehabilitation Services in accordance with the Performance Monitoring Program, which shall be operated as though the relevant Maintenance and Rehabilitation Services had been performed free from such adverse interference;
  - (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Availability Failure, Quality Failure or Service Failure resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Project Agreement as if there had been no such interference with the Maintenance and Rehabilitation Services, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation under Section 39 or otherwise in accordance with this Project Agreement and for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;
  - (iv) this Section 40.2 shall not limit the City's entitlement to reimbursement pursuant to Section 31.4;  
  
the City shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 40.1(a)(ii), 40.1(a)(iii), 40.1(a)(vi), 40.1(a)(vii), 40.1(a)(viii), 40.1(a)(ix), 40.1(a)(xii) or 40.1(a)(xiii), including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 21 - Variation Procedure; and
  - (v) the Monthly Service Payments payable by the City shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Maintenance and Rehabilitation Services, as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 21 - Variation Procedure.

#### **40.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
  - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
  - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Excusing Cause; and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 40.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 40.

#### **40.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 40 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

### **41. RELIEF EVENTS**

#### **41.1 Definition**

- (a) For the purposes of this Project Agreement, "**Relief Event**" means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
  - (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
  - (ii) failure by any Utility Company, local authority or other like body to enter into a Utility Agreement, perform works or provide services (solely in its role as utility service provider or similar service provider to the Project), provided, however, that such a failure shall not, in any event, be cause for a Relief Event, unless Project Co:
    - (A) has performed its obligations under any applicable agreement with the Utility Company with respect to the provision of such services and the relevant Utility Company has failed to meet its obligations thereunder; and
    - (B) has made all, and is continuing to make all, commercially reasonable efforts to diligently enforce its legal rights under any applicable agreement in respect of such services and otherwise cause the Utility Company to perform those works or services.

For clarity, Section 41.1(a)(ii) shall apply only in circumstances where the Utility Company is providing services to Project Co of the type provided by the Utility Company in the normal course of its business. For further clarity, Section 41.1(a)(ii) shall not apply in circumstances where Project Co has entered into a Utility Agreement for the design and construction of Utility Infrastructure and the applicable Utility Company has failed to comply with its obligations under such an agreement;

- (iii) accidental loss or damage to the Works and/or the System Infrastructure or any roads servicing the Lands;
- (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo falling short of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the System Infrastructure or the New Municipal Infrastructure or the construction or facility maintenance industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Project Operations or the construction and/or operation of transit systems in general, provided, however, that a civil disobedience or protest action shall not, in any event, be cause for a Relief Event unless Project Co has fully complied with Section 9.7.

#### **41.2 Consequences of a Relief Event**

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

but only to the extent that such failure to perform, is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event). For greater certainty, the City shall be entitled to make Deductions in accordance with Schedule 19 - Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 41.2(a)(ii).

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

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

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

### **41.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by

the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.

- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 41.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 41.
- (c) The Party claiming relief shall give written Notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial Notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 41.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any Notice referred to in Section 41.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

#### **41.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

### **42. FORCE MAJEURE**

#### **42.1 Definition**

- (a) For the purposes of this Project Agreement, "**Force Majeure**" means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
  - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
  - (ii) nuclear or radioactive contamination of the Works, the System Infrastructure and/or the Lands, unless Project Co or any Project Co Party is the source or cause of the contamination;

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

#### **42.2 Consequences of Force Majeure**

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

the Lane Closure Adjustment in accordance with the process set out in Schedule 7 – Mobility Matters;

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

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

- (f) Subject to Section 47, Project Co’s sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 42.
- (g) In respect of an event of Force Majeure that,
  - (i) occurs prior to the Initial Capital Investment Date; and
  - (ii) causes a delay to Project Co in performing the Works,

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

### **42.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 42.3, such failure shall be taken into account in determining such Party’s entitlement to relief pursuant to this Section 42.
- (c) The Party claiming relief shall give written Notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial Notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 42.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any Notice referred to in Section 42.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

#### **42.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 42 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

#### **42.5 Modifications**

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 26 - Dispute Resolution Procedure shall not apply to a failure of the City and Project Co to reach agreement pursuant to this Section 42.5.

### **43. PROJECT CO DEFAULT**

#### **43.1 Project Co Events of Default**

- (a) Subject to Section 43.1(b), for the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
  - (i) the occurrence of any of the following events other than as a consequence of a breach by the City of its payment obligations hereunder:
    - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co

or any of Project Co's assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, the City, a City Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the Governmental Activities or the availability of the System Infrastructure to System Users (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 43.1(a)(i)(A);

- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
  - (C) if any execution, sequestration, extent, garnishment or other process of or order by any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
  - (D) Project Co suffers any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this Section 43.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 43.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
  - (iii) Project Co either:
    - (A) failing to deliver a Recovery Schedule in accordance with Schedule 12 – Works Scheduling Requirements;
    - (B) delivering a Recovery Schedule under Schedule 12 – Works Scheduling Requirements which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or

- (C) delivering a Recovery Schedule under Schedule 12 – Works Scheduling Requirements that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 2.4 of Schedule 12 – Works Scheduling Requirements;
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Project Operations, the Governmental Activities or the availability of the System Infrastructure to System Users, or that may compromise (A) the City’s reputation or integrity, or (B) the nature of the public transit system in the City of Ottawa so as to affect public confidence in the public transit system in the City of Ottawa or the Project and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of Notice of the same from the City;
- (v) Project Co committing a breach of Section 50 or Section 51 or a breach of its obligations under this Project Agreement (other than a breach that is referred to in Sections 43.1(a)(i) to (iv) inclusive or 43.1(a)(vi) to (xx) inclusive) which has or will have a material adverse effect on the Governmental Activities or the availability of the System Infrastructure to System Users, other than where such breach is a consequence of a breach by the City of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
  - (A) Project Co shall:
    - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on the City and the Governmental Activities or the availability of the System Infrastructure to System Users;
    - (II) put forward, within 5 Business Days of receipt of Notice of such breach from the City, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of Notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
    - (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
  - (B) upon Project Co failing to comply with any of the provisions of Section 43.1(a)(v)(A):

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

- (xiv) Project Co failing to pay any sum or sums due to the City under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 26 - Dispute Resolution Procedure or have not been set off by Project Co pursuant to Section 32.12(a)(ii), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a Notice of non-payment from the City;
- (xv) Project Co failing to comply with Section 58;
- (xvi) Project Co failing to comply with Section 7.3 or Schedule 27 - Refinancing;
- (xvii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by the City of its obligations under this Project Agreement, and:
  - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
  - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xviii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 26 - Dispute Resolution Procedure;
- (xix) at any time after the Substantial Completion Date, Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by the City of its obligations under this Project Agreement) which results in a health and safety related criminal conviction or a conviction under the *Occupational Health and Safety Act* (Ontario) against Project Co or any Project Co Party or the City (an “**H&S Conviction**”) provided however that:
  - (A) an H&S Conviction against Project Co, a Project Co Party or the City shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 57.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to the City, in its sole discretion; and
  - (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 43.1(a)(xix), the City shall:

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

#### **43.2 Notification of Occurrence**

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify the City of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time, giving of Notice, determination of any condition, or otherwise, to constitute or give rise to a Project Co Event of Default.

#### **43.3 Right to Termination**

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

#### **43.4 Remedy Provisions**

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

- (i) within 5 Business Days of such Notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the Notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to the City, acting reasonably; and
  - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 43.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the Notice of default, the City shall have 5 Business Days from receipt of the same within which to notify Project Co that the City does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which the City shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a Notice of default was given under Section 43.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on the City and the Governmental Activities or the availability of the System Infrastructure to System Users; or
  - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 43.4(a)(i); or
  - (iii) such Project Co Event of Default is not remedied within 30 days of such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 43.4(a) and (b); or
  - (iv) where Project Co puts forward a plan and schedule pursuant to Section 43.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,
- then the City may terminate this Project Agreement in its entirety by written Notice with immediate effect, such Notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice.
- (d) Notwithstanding that the City may give the Notice referred to in Section 43.4(a), and without prejudice to the other rights of the City in this Section 43.4, at any time during which a Project Co Event of Default is continuing, the City may, at Project Co's risk and expense, take such steps as the City considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.

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

#### **43.5 Replacement of Non-Performing Maintenance and Rehabilitation Contractor**

- (a) The City may, acting reasonably, require Project Co to terminate the Maintenance and Rehabilitation Contractor and ensure that a replacement Maintenance and Rehabilitation Contractor is appointed in accordance with Section 57.3 to provide the Maintenance and Rehabilitation Services within 60 days:
  - (i) as an alternative to termination of this Project Agreement pursuant to Sections 43.3 or 43.4, in any circumstance in which the City could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Maintenance and Rehabilitation Contractor or otherwise relates to the Maintenance and Rehabilitation Services; or
  - (ii) if Project Co accrues, in any rolling 6 Payment Periods more than:
    - (A) **[REDACTED]** Failure Points in respect of Train Kilometres Availability Failures; or
    - (B) **[REDACTED]** Failure Points in respect of Quality Failures and Service Failures combined,

provided that this Section 43.5 shall not give rise to partial termination of either the obligation to provide the Project Operations or this Project Agreement.

- (b) If the City exercises its rights under this Section 43.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or performance of the Maintenance and Rehabilitation Services until such time as a replacement Maintenance and Rehabilitation Contractor can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate performance of the Maintenance and Rehabilitation Services and the Parties cannot agree within a further 3 Business Days to a plan for the interim management or performance of the Maintenance and Rehabilitation Services, then, without prejudice to the other rights of the City in this Section 43.5, the City itself may perform, or engage others (including a third party) to perform, the Maintenance and Rehabilitation Services and Section 31.4 shall apply, *mutatis mutandis*, to the Maintenance and Rehabilitation Services. Any Dispute in respect of the interim management or provision of the Maintenance and Rehabilitation Services may be referred for resolution in accordance with Schedule 26 - Dispute Resolution Procedure.
- (c) If Project Co fails to terminate, or secure the termination of, the Maintenance and Rehabilitation Contractor and to secure a replacement Maintenance and Rehabilitation Contractor in accordance with this Section 43.5, the City shall be entitled to exercise its termination rights in accordance with Sections 43.3 and 43.4, as applicable.

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

**43.6 Replacement of Non-Performing Revenue Vehicle Supplier**

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

**43.7 City's Costs**

- (a) Project Co shall reimburse the City for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by the City in exercising its rights under this Section 43, including any relevant increased administrative expenses. The City shall take commercially reasonable steps to mitigate such costs.

**43.8 No other Rights to Terminate**

- (a) The City shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 43 and 45.

**43.9 Project Co Termination of Revenue Vehicle Supplier**

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

**44. CITY DEFAULT**

**44.1 City Events of Default**

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

which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or

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

#### **44.2 Project Co’s Options**

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

#### **44.3 Project Co’s Costs**

- (a) The City shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 44, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

#### **44.4 No Other Rights to Terminate**

- (a) Project Co shall have no right or entitlement to terminate this Project Agreement, nor to accept any repudiation of this Project Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Project Agreement.

### **45. RELIEF EVENT AND NON-DEFAULT TERMINATION**

#### **45.1 Termination for Relief Event**

- (a) Subject to Section 45.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives Notice to the other Party pursuant to Section 41.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the Relief

Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 45.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount which is equal to or greater than the Monthly Service Payment.

#### **45.2 Termination for Force Majeure**

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 42.5 within 180 days from the date on which the Party affected gives Notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

#### **45.3 Termination for Convenience**

- (a) The City shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days' written Notice to Project Co.
- (b) In the event of Notice being given by the City in accordance with this Section 45.3, the City shall, at any time before the expiration of such Notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the Maintenance and Rehabilitation Services, or any element of the Maintenance and Rehabilitation Services, where such Works or Maintenance and Rehabilitation Services have not yet been commenced.

#### **45.4 Automatic Expiry on Expiry Date**

- (a) This Project Agreement shall terminate automatically on the Expiry Date.
- (b) Project Co shall not be entitled to any compensation due to termination of this Project Agreement on expiry of the Project Term on the Expiry Date.

### **46. EFFECT OF TERMINATION AND TRANSITIONAL ARRANGEMENTS**

#### **46.1 Termination**

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a Notice of termination or termination on the Expiry Date pursuant to Section 45.4, this Section 46 shall apply in respect of such termination.

#### **46.2 Continued Effect - No Waiver**

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Project Agreement, including any right to terminate this Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

#### **46.3 Continuing Performance**

- (a) Subject to any exercise by the City of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 22 - Compensation on Termination) notwithstanding the giving of any Notice of default or Notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 46.

#### **46.4 Effect of Notice of Termination**

- (a) On the service of a Notice of termination, or termination on the Expiry Date pursuant to Section 45.4:
- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to the City as shall not already have been transferred to the City pursuant to Section 53.1, Project Co shall transfer to, and there shall vest in, the City, free from all Encumbrances (other than the Encumbrances caused or consented to by the City), such part of the Works, the System Infrastructure and the New Municipal Infrastructure as shall have been constructed and such items of plant, infrastructure and equipment as shall have been procured by Project Co, and, if the City so elects:
    - (A) all plant, equipment and materials (other than those referred to in Section 46.4(a)(i)(B)) on or near to the Site shall remain available to the City for the purposes of completing the Works; and
    - (B) all construction plant and equipment shall remain available to the City for the purposes of completing the Works, subject to payment by the City of the Construction Contractor's reasonable charges;
  - (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to the City (to the extent such items have not already been delivered to the City) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works, the System Infrastructure and the New Municipal Infrastructure;
  - (iii) in so far as title shall not have already passed to the City pursuant to Section 53.1 or Section 46.4(a)(i), Project Co shall hand over to, and there shall vest in, the City, free from all Encumbrances (other than any Encumbrances caused or consented to by the

City), the System Infrastructure and the New Municipal Infrastructure, together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment including, notwithstanding that termination may occur prior to the Expiry Date, the verification and transfer of inventory as set forth in Appendix C (Expiry Date Requirements) of the Maintenance and Rehabilitation Requirements, and to the extent that any such assets or rights are not capable of being transferred by Project Co to the City, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by the City in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;

- (iv) if the City so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Construction Contract and the Maintenance and Rehabilitation Contract), and any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to the City or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with any Contractor shall be made to the City pursuant to, and subject to, the terms of the applicable Direct Agreement;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if the City so elects, execute such sale) to the City at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 26 - Dispute Resolution Procedure), free from all Encumbrances (other than any Encumbrances caused or consented to by the City), all or any part of the stocks of material and other assets, road vehicles, construction equipment, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the System Infrastructure, and reasonably required by the City in connection with the operation of the System Infrastructure or the performance of the Maintenance and Rehabilitation Services;
- (vi) Project Co shall deliver to the City (to the extent such items have not already been delivered to the City) one complete set of:
  - (A) the most recent Record Drawings in the format that the City, acting reasonably, considers most appropriate at the time showing all alterations made to the System Infrastructure since the Substantial Completion Date;
  - (B) the most recent maintenance, operation and training manuals for the System Infrastructure; and
  - (C) current regulations and standards governing the System Infrastructure.
- (vii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to the City, free from all Encumbrances (other than any Encumbrances caused or consented

to by the City), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement and included in the System Infrastructure and the New Municipal Infrastructure;

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

#### **46.5 Ownership of Information**

- (a) Subject to Section 49, all information obtained by Project Co, including the Record Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, lease, license and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Operations accumulated over the course of the Project Term shall be the property of the City and upon termination of this Project Agreement shall be provided or returned to the City, as applicable, in electronic format acceptable to the City, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

#### **46.6 Provision in Subcontracts**

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

#### **46.7 Transitional Arrangements**

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

- (i) cooperate fully with the City and any successors providing services in the nature of any of the Maintenance and Rehabilitation Services and any part of the Maintenance and Rehabilitation Services in order to achieve a smooth transfer of the manner in which the Maintenance and Rehabilitation Services is performed and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of any System Users;
  - (ii) as soon as practicable remove from the Lands all property belonging to Project Co or any Project Co Party that is not acquired by the City pursuant to Section 46.4 or otherwise, and, if Project Co has not done so within 60 days after any Notice from the City requiring it to do so, the City may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
  - (iii) forthwith deliver to the City Representative:
    - (A) all keys to, and any pass cards and other devices used to gain access to any part of the System Infrastructure; and
    - (B) to the extent transferable and without prejudice to the City's rights pursuant to Section 49, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the System Infrastructure;
  - (iv) as soon as practicable vacate the Lands and, without limiting Project Co's obligations under Schedule 23 - Expiry Transition Procedure, shall leave the Lands and the System Infrastructure in a safe, clean and orderly condition.
- (b) If the City wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to the Maintenance and Rehabilitation Services or any part of the Maintenance and Rehabilitation Services, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with the City fully in such competition process, including by:
- (i) providing any information which the City may reasonably require to conduct such competition, including all information contained in any asset management system maintained by Project Co not otherwise transferred to the City, other than Sensitive Information; and
  - (ii) assisting the City by allowing any or all participants in such competition process unrestricted access to the Lands and the System Infrastructure.

#### **46.8 Cessation of Rights and Obligations on Termination**

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

#### **46.9 Survival**

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
- (i) all representations, warranties and indemnities under this Project Agreement; and
  - (ii) Sections 1.2, 5, 7, 15.2, 16.1, 16.3(a), 16.4(a), 16.5(a), 24.6, 25.11, 25.14, 30.1, 30.5, 31, 32.6, 32.8, 32.12, 32.13, 32.14, 33, 34, 35, 43.6, 44.3, 45.4, 46, 47, 48, 49 with the exception of 49.4(b), 50, 51, 53, 54, 55, 56, 58.3, 59.1, 62.4, 62.8, 62.9, 62.10, 62.11 and 62.12 of this Project Agreement, Schedule 7 – Mobility Matters, Schedule 22 - Compensation on Termination, Sections 2, 4 and 5 of Schedule 23 - Expiry Transition Procedure, Sections 1.2 to 1.8 of Schedule 25 - Record Provisions, Schedule 26 - Dispute Resolution Procedure, Sections 2.1 – 2.7, and 3.2-3.9 of Schedule 35 – Intellectual Property, Schedule 36 – System Extension and any other provisions of this Project Agreement which are expressed to survive termination and which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 45.4.

#### **47. COMPENSATION ON TERMINATION**

##### **47.1 Compensation on Termination**

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

##### **47.2 Full and Final Settlement**

- (a) Except as otherwise provided in Section 47.2(b), any compensation paid pursuant to this Section 47, including pursuant to Schedule 22 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and the City, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and the City shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 47.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 32.12 or taken into account pursuant to Schedule 22 - Compensation on Termination in determining or agreeing upon the City Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum or any other termination sum, as the case may be;

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

#### **48. EXPIRY TRANSITION PROCEDURE**

##### **48.1 Expiry Transition**

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

#### **49. INTELLECTUAL PROPERTY**

##### **49.1 Ownership of Intellectual Property**

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

##### **49.2 Licences to Intellectual Property**

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

##### **49.3 Representation and Warranty**

- (a) Project Co represents, warrants and covenants to the City that:
  - (i) Project Co has and shall have the full and unencumbered right to provide all rights and Licences granted to the City in this Project Agreement and to make all assignments of Intellectual Property as contemplated in this Project Agreement and to otherwise fully comply with the terms and requirements of Schedule 35 – Intellectual Property and its obligations therein;
  - (ii) any Intellectual Property Licences to the City pursuant to this Project Agreement does not and shall not infringe, and is not and shall not be misappropriation of, any third party Intellectual Property rights;

- (iii) as of Commercial Close:
  - (A) Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the any such Intellectual Property; and
  - (B) no fact is known to Project Co (including in respect of any actual, pending or threatened disputes, claims, suits, actions or proceedings or any other circumstance or event) that will, or could reasonably, effect, limit or prevent Project Co from fully complying with this Section 49.3(a).

#### **49.4 Jointly Developed Materials**

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials or Intellectual Property are developed jointly by, Project Co or any Subcontractor and the City to the exclusion of any other party pursuant to this Project Agreement or in relation to the System Infrastructure, the Lands or Project Operations (the “**City Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that the City shall be the sole and exclusive owner of all right, title and interest in and to the City Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and Project Co shall, at the request of the City, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) The City hereby grants Project Co a royalty free, non-exclusive and non-transferable license, with a right to grant sub-licences to each Subcontractor, to use the City Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable. For clarity, the license granted to Project Co in accordance with this Section 49.4(b) shall not extend to any City Jointly Developed Materials.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to the City, in the case of the City Jointly Developed Materials.
- (d) In the event of any inconsistency between this Section 49.4 and any provision of Schedule 35 – Intellectual Property, the wording of this Section 49.4 shall prevail.

#### **49.5 Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 49 or Schedule 35 – Intellectual Property are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of the City, either at no charge or at the lowest reasonable fee, the grant of a license or sub-license for any relevant software to enable the City or its nominee to access and otherwise use, subject to the payment by the City of any relevant fee) such data, materials and documents in accordance with rights granted pursuant to Schedule 35 – Intellectual Property.

- (b) For the purposes of Section 49.5(a), “use” has the meaning set out in Schedule 35 – Intellectual Property, and includes the Limited Modification Rights.
- (c) Without limiting the obligations of Project Co under Section 49.5(a), Project Co shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in this Section 49 in accordance with Good Industry Practice. Project Co shall submit to the City Representative Project Co’s proposals for the back-up and storage in safe custody of such data, materials and documents and the City shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the City Representative has not objected. Project Co may vary its procedures for such back-up and storage subject to submitting its proposals for change to the City Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 49.5(c) may be referred for resolution in accordance with Schedule 26 - Dispute Resolution Procedure with reference to Good Industry Practice.

#### **49.6 City Trade-Marks**

- (a) Project Co shall not:
  - (i) use any City Trade-Marks without obtaining a trade-mark license on terms and conditions mutually satisfactory to the City and Project Co, each acting reasonably; or
  - (ii) use the names or any identifying logos or otherwise of the City or the City Representative in any advertising or permit them so to be used except with the prior written consent of the City.

#### **49.7 Confidential Information**

- (a) It is expressly acknowledged and agreed that nothing in this Section 49 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

#### **49.8 Government Use of Documents**

- (a) Project Co hereby disclaims any right, title or interest of any nature whatsoever it may have in or to this Project Agreement that might prohibit or otherwise interfere with the City’s ability to use this Project Agreement in any manner desired by the City.
- (b) Project Co hereby consents to the use by the City of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by the City (in consultation with Project Co) of any information supplied in confidence to the City by Project Co in circumstances where disclosure may be refused under Section 17(1) of FIPPA.

#### **49.9 Restrictions**

- (a) The Parties hereby agree that either Party may use the Project Know-How for any purpose, provided, however, that neither Project Co nor any Subcontractor shall use the Project Know-How to the extent that such Project Know-How incorporates, references or is otherwise based on

the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of the City, the Intellectual Property of any City Party or any third party provided by the City, the Confidential Information of the City, the Confidential Information of any City Party or any third party provided by the City, including the Output Specifications unless such use is otherwise permitted pursuant to this Project Agreement in order to enable Project Co and the Project Co Parties to meet Project Co's obligations under this Project Agreement.

- (b) Project Co hereby covenants and agrees that it will not make any commercial use, including use in any other request for proposal or similar procurement process, of the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of the City, the Intellectual Property of any City Party or any third party provided by the City, the Confidential Information of the City, the Confidential Information of any City Party or any third party provided by the City, including the Output Specifications, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of the City, the Intellectual Property of any City Party provided by the City, the Confidential Information of the City, the Confidential Information of any City Party provided by the City, including the Output Specifications.
- (c) Nothing in this Section 49.9 shall be deemed to grant to any party (including any Subcontractor or any personnel thereof) any right or License in respect of any other party's or other persons' Intellectual Property.

## **50. CONFIDENTIALITY/COMMUNICATIONS**

### **50.1 Disclosure**

- (a) Subject to Sections 50.1(b), 50.1(c) and 50.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, the City has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as the City, in its sole discretion, may consider appropriate. In exercising its discretion, the City will be guided by the principles set out in Sections 50.1(b) and 50.1(c).
- (b) The City will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under Section 17(1) of FIPPA.
- (c) Notwithstanding Section 50.1(b), but subject to Section 50.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), the City may disclose such information.

## **50.2 Redaction**

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), the City shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 50.1(b). The Parties acknowledge and agree that the Annual Service Payment, but not the breakdown thereof, may be disclosed.
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 50.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 26 - Dispute Resolution Procedure, and the City shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

## **50.3 Disclosure to Government**

- (a) Project Co acknowledges and agrees that subject to compliance with FIPPA, the City will be free to use, disclose or publish (including on websites) any information, including Confidential Information, on such terms and in such manner as the City sees fit.
- (b) For greater certainty, Project Co acknowledges and agrees that, subject only to the removal of any information which Project Co is (or would be) entitled to refuse to disclose pursuant to section 17(1) of FIPPA, this Project Agreement, any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by the City.

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

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

## **50.5 Use and Disclosure of Confidential Information**

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information

of the other Party, provided that this Section 50 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.

- (b) Project Co may:
  - (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee or agent of the Lenders and the Lenders' Agent, and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Works or which Project Co is obliged to supply by the terms of the Lending Agreements; and
  - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that the City may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the City's alternate procurement and financing policies and framework. the City will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall,
  - (i) protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event with less than a reasonable degree of care;
  - (ii) if legally compelled to disclose any Confidential Information,
    - (A) provide the disclosing Party with prompt Notice to that effect to allow the disclosing Party to seek any appropriate remedies and cooperate with the disclosing Party and its legal counsel; and
    - (B) disclose only that portion of the Confidential Information that it is legally required to disclose; and
  - (iii) provide Confidential Information to the disclosing Party upon demand by the disclosing Party.

Section 50.5(e)(iii) shall not apply to Confidential Information in relation to which a Party has been provided a license pursuant to Schedule 35 – Intellectual Property provided that the use of such Confidential Information is in accordance with Schedule 35 – Intellectual Property.

- (f) Without limiting the generality of this Section 50.5, Project Co shall comply with the document control and security protocol submitted by Project Co pursuant to Section 20.10 and approved by the City, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by the City.

## **50.6 Exceptions**

- (a) Information of a Party (the “**Proprietor**”), other than Government Sensitive Information and other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
- (i) the Proprietor advises the other Party to whom the information has been disclosed (the “**Confidant**”) that the information is not required to be treated as Confidential Information;
  - (ii) the information is as of Commercial Close, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
  - (iii) the information is a matter of public record or in the public domain;
  - (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
  - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant’s knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
  - (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
  - (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
  - (viii) the information is disclosed to the City upon a termination of this Project Agreement, pursuant to Section 46 or is otherwise required by the City for the purposes of performing (or having performed) the Project Operations, including the design or construction of the System Infrastructure, the operation, maintenance or improvement of the System Infrastructure, or any other operations or services the same as, or similar to, the Project Operations, or to exercise any right granted pursuant to Schedule 35 – Intellectual Property that survives the termination of this Project Agreement; or

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

**50.7 Survival of Confidentiality**

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

**50.8 Communication and Stakeholder Engagement Obligations**

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

**50.9 Confidentiality of Intellectual Property**

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

**51. PERSONAL INFORMATION**

**51.1 General**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of the City and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by the City.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA, the *Personal Information Protection and Electronic Documents Act* (Canada), and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Project Operations.
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 51.
- (e) Project Co shall allow the City on reasonable Notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 51 including the measures used by Project Co and each

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

- (f) Project Co shall not subcontract or delegate to any third party any of the Project Operations that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of the City and without obtaining written contractual commitments of such third party substantially the same as those of this Section 51.

### **51.2 Protection of Personal Information**

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall and shall cause each Project Co Party to restrict access to Personal Information to only those authorized employees and permitted Project Co Parties that require access to such Personal Information to fulfil their job requirements in connection with the Project Operations and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 51.
- (c) Upon termination of this Project Agreement or upon request of the City, whichever comes first, Project Co shall immediately cease all use of and return to the City or, at the direction of the City, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
- (d) To the extent that any of the Project Operations involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Section 51.2(c), such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
- (e) Project Co shall immediately inform the City of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 51.
- (f) The City may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within two Business Days of such request an agreement satisfactory to the City, acting reasonably, requiring such person to keep Personal Information confidential.

### **51.3 Personal Information**

- (a) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to the City and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (b) To the extent of any conflict or inconsistency between this Section 51 and any other provision of the Project Agreement, this Section 51 shall prevail.
- (c) The obligations in this Section 51 shall survive the termination of this Project Agreement.

## **52. INSURANCE AND PERFORMANCE SECURITY**

### **52.1 General Requirements**

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

### **52.2 No Relief from Liabilities and Obligations**

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

## **53. TITLE**

### **53.1 Title**

- (a) Title to each item and part of the System Infrastructure or the New Municipal Infrastructure, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to the City (or as the City may direct) upon the receipt of such item on the Lands, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the System Infrastructure and the New Municipal Infrastructure or are to be affixed or attached to the System Infrastructure and the New Municipal Infrastructure prior to Substantial Completion shall pass to the City (or as the City may direct) at the time that such items are included in the System Infrastructure and the New Municipal Infrastructure or are to be affixed or attached to the System Infrastructure and the New Municipal Infrastructure.

## **54. INDEMNITIES**

### **54.1 Project Co Indemnities to the City**

- (a) Project Co shall indemnify and save harmless the City and City Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (i) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (ii) any physical loss of or damage to all or any part of the Lands, lands that are adjacent to the Lands (but that are not Lands), the System Infrastructure or of any part of the New Municipal Infrastructure prior to being handed over to the City pursuant to Section 25.13, or to any equipment, assets or other property related thereto;
- (iii) the death or personal injury of any person;
- (iv) any physical loss of or damage to property or assets of any third party including, for clarity, any physical loss of or damage to the System Infrastructure, or New Municipal Infrastructure after Handover to the City;
- (v) any other loss or damage of any third party (except for Injurious Affection claims under (vi)); or
- (vi) Injurious Affection claims made by third parties,

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

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

suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.

- (c) Project Co shall indemnify and save harmless the City and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
- (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Authorizations, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Authorizations in accordance with this Project Agreement;
  - (ii) any Contamination on, in or under, or migrating to or from, the Lands, for which Project Co is responsible pursuant to Section 16.2; or
  - (iii) the provision of assistance by the City to Project Co pursuant to Section 9.7(e),
- except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by the City or by any act or omission of the City or any City Party.
- (d) Without prejudice to the City's rights under Section 43 and any other rights under this Project Agreement, if the City exercises its step-in rights under any Direct Agreement, Project Co shall indemnify the City for all obligations of Project Co assumed by the City under the Contracts, and for all reasonable costs and expenses incurred by the City in relation to the exercise of the City's rights.
- (e) Project Co shall indemnify the City for damages suffered or incurred on account of: (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to the City under Schedule 26 - Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by the City, or from the date identified (if any) applicable to an amount determined as payable by Project Co to the City under Schedule 26 - Dispute Resolution Procedure, up to and including the date of payment.
- (f) Project Co shall defend, in accordance with the procedures of Section 54.3, and indemnify and save harmless the City and City Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) any breach of Section 49.3;
  - (ii) any claim, suit, action or proceeding by a Person alleging that (x) any Intellectual Property Licensed or assigned to and used by the City pursuant to this Project Agreement; or (y) any Intellectual Property or other materials used by Project Co or any

Project Co Party or any Subcontractor in the performance of the Project Operations and the Project, infringes or misappropriates any Intellectual Property rights of that Person, other than where such claim, suit, action or proceeding is directly caused by,

- (A) the use of such Intellectual Property by the City not in accordance with this Project Agreement or the applicable Technical Information; or
  - (B) the use of such Intellectual Property by the City in combination with other products, software or equipment not supplied by or on behalf of Project Co or the Subcontractors and not authorized by any of them;
- (iii) any claim, suit, action or proceeding by any Licensor alleging that Project Co or any Project Co Party or any Subcontractor has used any City Supplied Third Party Intellectual Property in breach of Sections 3.1(a)(ii), 3.1(b), 3.1(c) or 3.1(d) of Schedule 35 – Intellectual Property.
- (g) Without limiting and in addition to the obligations in Section 54.1(f), if, as a result of a claim under Section 54.1(f)(i) or Section 54.1(f)(ii), all or any part of any Intellectual Property Licensed or assigned to and used by the City pursuant to this Project Agreement; or any Intellectual Property or other materials used by Project Co or any Subcontractor in the performance of the Project Operations and the Project (any or all of the foregoing the “**Infringing Material**”) becomes, or in Project Co’s opinion is likely to be, enjoined from use, Project Co will:
- (i) give notice to the City of the same; and
  - (ii) at its sole option and expense, either:
    - (A) procure for itself and the City, to the extent required, the right to continue to use the infringing element or component of the Infringing Material as contemplated in this Project Agreement; or
    - (B) modify the infringing element or component of the Infringing Material so that it is non-infringing without materially affecting the quality, performance and functionality of such infringing element or component, or replace the infringing element or component with a substitute of materially equivalent quality, performance and functionality.

## **54.2 City Indemnities to Project Co**

- (a) The City shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by the City or any act or omission of any City Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;

- (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by the City or any deliberate or negligent act or omission of any City Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and
- (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by the City or any deliberate or negligent act or omission of any City Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

provided that there shall be excluded from the indemnity given by the City any liability for the occurrence of risks against which Project Co is required to insure under this Project Agreement to the extent of the proceeds available or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Project Agreement.

- (b) The City shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by the City herein.
- (c) The City shall indemnify Project Co for damages suffered or incurred on account of: (i) any payment not duly made by the City pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by the City; or (iii) an amount determined as payable by the City to Project Co under Schedule 26 - Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by the City to Project Co under Schedule 26 - Dispute Resolution Procedure, up to and including the date of payment.
- (d) The City shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by the City set out in Section 5.2(a).

### **54.3 Conduct of Claims**

- (a) This Section 54.3 shall apply to the conduct of claims, made by a third person against a Party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The Party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any Notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 54, the Beneficiary shall give written Notice to the Indemnifier as soon as reasonably

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

- (c) Subject to Sections 54.3(d), 54.3(e) and 54.3(f), on the giving of such Notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary's reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) With respect to any claim conducted by the Indemnifier:
- (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 54.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 54.3(c);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the Notice from the Beneficiary under Section 54.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or
  - (iii) the Indemnifier fails to comply in any material respect with Section 54.3(d).

- (f) The Beneficiary shall be free at any time to give Notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 54.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where the City is the Beneficiary, the City may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such Notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any Notice pursuant to this Section 54.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
  - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,
- provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.
- (h) Any person taking any of the steps contemplated by this Section 54.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

#### **54.4 Mitigation - Indemnity Claims**

- (a) For greater certainty, Section 62.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

### **55. LIMITS ON LIABILITY**

#### **55.1 Indirect Losses**

- (a) Subject to Section 55.1(b), without prejudice to the City’s rights under the Payment Mechanism, or the Parties’ rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this

Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:

- (i) for punitive, exemplary or aggravated damages;
- (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
- (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

(collectively, “**Indirect Losses**”).

- (b) With respect to the indemnity in Section 54.1(a)(i), the exceptions in Sections 55.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, the City’s loss of use of the System Infrastructure or the New Municipal Infrastructure or a portion thereof, which for the purposes of Section 54.1(a)(i), shall be Direct Losses.

## **55.2 No Liability in Tort**

- (a) Subject to the indemnities provided herein, neither the City nor any City Party shall be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to the City or any City Party in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

## **55.3 Sole Remedy**

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

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

- (b) Nothing in Section 55.3(a) shall prevent or restrict the right of the City to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (c) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 24 - Insurance and

Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

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

#### **55.4 Maximum Liability**

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

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

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

- (b) Project Co's maximum aggregate liability in respect of all claims under Section 54.1(a)(i) and the liquidated damages paid by Project Co pursuant to Section 25.4 shall not exceed \$[REDACTED]. This limit shall be included within Project Co's Construction Period Limit, shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 24 - Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 55.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.
- (d) For clarity, nothing in this Section 55.4 shall restrict or limit, or establish any maximum liability, in respect of any amount payable, by Project Co to the City, as the Lane Closure Adjustments pursuant to Schedule 7 – Mobility Matters.

## **56. DISPUTE RESOLUTION PROCEDURE**

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

## **57. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL**

### **57.1 Project Co Assignment**

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, any of the Contracts or any agreement entered into in connection with this Project Agreement without the prior written consent of the City, which shall not be unreasonably withheld or delayed, and which shall, in any event, be conditional upon Project Co paying to the City any amount calculated under Section 57.6(a)(ii) and that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliate is a Restricted Person or a person whose standing or activities may compromise (i) the City's reputation or integrity, or (ii) the nature of the public transit system in the City of Ottawa so as to affect public confidence in the public transit system in the City of Ottawa or the Project.
- (b) Section 57.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if the City so requires.

### **57.2 Assignment by the City**

- (a) The City, upon providing written notice to Project Co, may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and the City are parties:
  - (i) to the Province;

- (ii) as may be required to comply with Applicable Law;
  - (iii) to any minister of the Province;
  - (iv) to an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the City under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of the City's obligations hereunder and under the other Project Documents to which the City is party in respect of the period from and after the assignment; and
  - (v) in circumstances other than those described in Sections 57.2(a)(i) to 57.2(a)(iv), with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of the City hereunder and under any agreement in connection with this Project Agreement to which Project Co and the City are parties in respect of the period from and after the assignment.
- (b) The City shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 57.2.

### **57.3 Subcontractors**

- (a) Project Co shall not subcontract any interest in this Project Agreement, or any of the Contracts, and shall not permit the Contractors to subcontract any interest in any of the Contracts to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities may compromise (i) the City's reputation or integrity, or (ii) the nature of the public transit system in the City of Ottawa so as to affect public confidence in the public transit system in the City of Ottawa or the Project.
- (b) Project Co shall not terminate, agree to the termination of or replace any Contractor unless Project Co has complied with Sections 7.2(a), 57.3(c) and 57.3(d) or received the prior written consent of the City.
- (c) Subject to Section 57.3(d), if any of the Contracts shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Contractor, shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to the City's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor, Maintenance and Rehabilitation Contractor and Revenue Vehicle Supplier that, and Project Co shall require that, any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Direct Agreement entered into by the person so replaced, unless any material variations are approved by the City, acting reasonably.

### **57.4 Changes in Ownership and Control**

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the City's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project.
- (b) No Change in Ownership of Project Co, or of any Control Party, shall be permitted:
  - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities may compromise (A) the City's reputation or integrity, or (B) the nature of the public transit system in the City of Ottawa so as to affect public confidence in the public transit system in the City of Ottawa or the Project; or
  - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations, the Governmental Activities or the availability of the System Infrastructure to System Users.
- (c) In the event that a person having Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project becomes a Restricted Person, the City may:
  - (i) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control; or
  - (ii) in any other circumstance, require a Change in Ownership so that the Restricted Person shall be divested of its Direct or Indirect Power or Control,in each case, on such terms as are satisfactory to the City, in its discretion.
- (d) Project Co shall provide notice to the City of any Change in Ownership of Project Co or of any Control Party, as the case may be, that is not a Change in Control within 5 Business Days after such Change in Ownership, and such notice shall include:
  - (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership; and
  - (ii) a statement identifying the Excess Equity Gain arising from such Change in Ownership together with supporting calculations and documents.
- (e) Subject to Sections 57.4(a), (b) and (c) and to the payment by Project Co of any Excess Equity Gain under Section 57.6(a)(i), no Change in Control of Project Co, or of any Control Party, shall be permitted without the prior written consent of the City, not to be unreasonably withheld or delayed.
- (f) Project Co shall provide notice to the City of any proposed Change in Control of Project Co or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control, and such notice shall include:

- (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests in each case prior to and following any such proposed Change in Control;
- (ii) as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over Project Co or the relevant Control Party pursuant to such Change in Control; and
- (iii) a statement identifying the Excess Equity Gain which would arise from such proposed Change in Control together with supporting calculations and documents.

Following the delivery to the City of the notice referred to in this Section 57.4(f), Project Co shall provide the City with such other information pertaining to the proposed Change in Control as the City may reasonably request.

- (g) Upon request by Project Co and delivery of the information required by the City, the City shall advise Project Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities may compromise (A) the City's reputation or integrity, or (B) the nature of the public transit system in the City of Ottawa so as to affect public confidence in the public transit system in the City of Ottawa or the Project.
- (h) Notwithstanding the definition of "Control Parties" set out Schedule 1 – Definitions and Interpretation, this Section 57.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.

#### **57.5 City's Due Diligence**

- (a) Project Co shall promptly reimburse the City for the City's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of the City pursuant to, or the City's determination of Project Co's compliance with, Sections 57.1, 57.3 or 57.4, whether or not such consent is granted.

#### **57.6 Gain Share**

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

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

## 58. PROHIBITED ACTS

### 58.1 Definition

(a) The term “**Prohibited Act**” means:

- (i) offering, giving or agreeing to give to the City or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
  - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Project Agreement or any other agreement with the City or any public body in connection with the Project; or
  - (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with the City or any public body in connection with the Project;

provided that this Section 58.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to the City or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with the City or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with the City or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, to the City or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the City, provided that this Section 58.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to the City or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with the City or any public body in connection with the Project without contravening the intent of this Section 58;
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with the City or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud the City or any other public body.

### 58.2 Remedies

(a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then the City shall be entitled to act in accordance with the following:

- (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then the City may give written Notice to Project Co and Section 43 shall apply;
  - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then the City may give written Notice to Project Co and Section 43 shall apply, unless, within 30 days of receipt of such Notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person;
  - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then the City may give written Notice to Project Co and Section 43 shall apply, unless, within 30 days of receipt of such Notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 57.3;
  - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then the City may give Notice to Project Co and Section 43 shall apply, unless, within 30 days of receipt of such Notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person; and
  - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 58.2(a)(i) to 58.2(a)(iv), then the City may give Notice to Project Co and Section 43 shall apply, unless, within 30 days of receipt of such Notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Project Operations shall be performed by another person.
- (b) Any Notice of termination under this Section 58.2 shall specify:
- (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom the City believes has committed the Prohibited Act; and
  - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 58.2, the City shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 58.

### **58.3 Permitted Payments**

- (a) Nothing contained in this Section 58 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their

employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

**58.4 Notification**

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

**58.5 Replacement of Project Co Party**

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

**59. NOTICES**

**59.1 Notices to Parties**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Project Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Project Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co: **[REDACTED]**

Email: **[REDACTED]**

Attn.: **[REDACTED]**

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

Email: **[REDACTED]**

Attn: **[REDACTED]**

**59.2 Notices to Representatives**

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

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

Email: [REDACTED]

Attn: [REDACTED]

with a copy to:

[REDACTED]

Attn: [REDACTED]

If to the City Representative:

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

Email: [REDACTED]

Attn: [REDACTED]

### **59.3 Facsimile**

- (a) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 59.3.

### **59.4 Change of Address**

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 59.1 or 59.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

### **59.5 Deemed Receipt of Notices**

- (a) Subject to Sections 59.5(b), 59.5(c) and 59.5(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 59.

- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

#### **59.6 Service on the City**

- (a) Where any Notice is required to be served on the City, the obligation to serve such Notice shall be fulfilled by serving it on the City in accordance with the provisions of this Section 59.

### **60. EMERGENCY MATTERS**

#### **60.1 Emergency**

- (a) From Financial Close until Substantial Completion Date, upon the occurrence of an Emergency, Project Co shall comply with the Emergency Response Plan.
- (b) From and after Substantial Completion Date, upon the occurrence of an Emergency, Project Co shall comply with its Emergency Response Plan in accordance with the Output Specifications.
- (c) If, in respect of any Emergency, the City notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by the City or any other statutory body, then Project Co shall, subject to Schedule 21 - Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application and on the basis that such procedures shall take precedence to the extent that they overlap with the procedures mentioned in Section 60.1(a) or (b)).

### **61. INTENTIONALLY DELETED**

### **62. GENERAL**

#### **62.1 Amendments**

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

#### **62.2 Waiver**

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect

to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

### **62.3 Relationship Between the Parties**

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between the City and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between the City and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
  - (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent that it is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
  - (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation Board or other similar levies with respect to any persons employed or engaged by the other Party;
  - (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
  - (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

### **62.4 General Duty to Mitigate**

- (a) The City and Project Co shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Project Agreement.

### **62.5 Actual Knowledge**

- (a) Except where limited to actual knowledge and/or such knowledge which they, at law, may from time to time, be deemed to have, Project Co and the City shall, for all purposes of this Project Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by the directors, officers and senior management of Project Co and in the case of the City, its directors, officers and senior management, and the City Representative or the Project Co Representative, as applicable. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the “knowledge” of Project Co or of the City shall be construed in a manner consistent with the foregoing sentence.

#### **62.6 Entire Agreement**

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

#### **62.7 No Reliance**

- (a) Each of the Parties acknowledge that:
- (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
  - (ii) this Section 62.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

#### **62.8 Severability**

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

#### **62.9 Enurement**

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

**62.10 Governing Law and Jurisdiction**

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 26 - Dispute Resolution Procedure, the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

**62.11 Cumulative Remedies**

- (a) Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

**62.12 Further Assurance**

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Project Agreement.

**62.13 Costs**

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement.

**62.14 Language of Agreement**

- (a) Each of the parties acknowledges having requested and being satisfied that this Project Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English.

**62.15 Proof of Authority**

- (a) The City and Project Co each reserve the right to require any person executing this Project Agreement on behalf of the other Party to provide proof, in a form acceptable to the City or

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

#### **62.16 Counterparts**

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

#### **62.17 City Party as Third Party Beneficiaries**

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

#### **62.18 Copyright Notice**

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

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

**CITY OF OTTAWA**

Per:

\_\_\_\_\_  
Name: [REDACTED]

Title: [REDACTED]

**TRANSITNEXT GENERAL PARTNERSHIP**

Per:

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

Title:

Per:

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

Title:

I/We have authority to bind the corporation.

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires, the following terms have the following meanings:
  - 1.1 “**Accessibility for Ontarians with Disabilities Act (Ontario)**” means the *Accessibility for Ontarians with Disabilities Act*, S.O. 2005, c. 11, as amended from time to time.
  - 1.2 “**Account Trustee**” has the meaning given in Schedule 28 – Insurance Trust Agreement.
  - 1.3 “**Activity**” or “**Activity Id**” shall mean an element of Work performed during the course of the Project. An Activity has an expected duration and cost requirements, and shall be the lowest level of any Works Schedule.
  - 1.4 “**Actual Relevant Insurance Cost**” has the meaning given in Section 7.1(a) of Schedule 24 - Insurance and Performance Security Requirements.
  - 1.5 “**Additional Contractor**” means any independent contractor (not being, for the avoidance of doubt, any of the Third Party Contractors or Project Co or any Project Co Party) or the City’s own forces, engaged by the City to carry out the Additional Works.
  - 1.6 “**Additional Property Interest**” has the meaning given in Schedule 33 – Lands.
  - 1.7 “**Additional Works**” means those works or services, in relation to any of the System Infrastructure which are not Works or Maintenance and Rehabilitation Services and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
  - 1.8 “**Adjacent Developments**” means any development works or like activity carried out during the Project Term by or on behalf of any third party adjacent to or which otherwise affects or may potentially affect any part of the Works, the Maintenance and Rehabilitation Services, the Lands or the System Infrastructure.
  - 1.9 “**Adjudicator**” has the meaning given in Schedule 26 - Dispute Resolution Procedure.
  - 1.10 “**Adjusted Estimated Fair Value**” has the meaning given in Schedule 22 – Compensation on Termination.
  - 1.11 “**Adjusted Highest Qualifying Tender Price**” has the meaning given in Schedule 22 – Compensation on Termination.
  - 1.12 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of its unitholders, shareholders, partners or owners as the case may be.
  - 1.13 “**Aggregate Actual Lane Closures**” or “**AALC**” has the meaning given in Schedule 7 – Mobility Matters.

- 1.14 “**Aggregate Actual Lane Closure Cost**” or “**AALCC**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.15 “**Airport**” means the Ottawa MacDonald Cartier International Airport in Ottawa, Canada.
- 1.16 “**Airport Authority**” means the Ottawa MacDonald Cartier International Airport Authority and its agents and representatives.
- 1.17 “**Airport Authority Construction Agreement**” has the meaning given in the Airport Authority MOU.
- 1.18 “**Airport Authority MOU**” means the “Ottawa Airport-Airport Link Memorandum of Understanding” between the Airport Authority and the City relating to the Airport Link and the Station to be built at the Airport.
- 1.19 “**Airport Authority Operating Agreement**” has the meaning given in the Airport Authority MOU.
- 1.20 “**Airport Link**” has the meaning given in Schedule 15 – Output Specifications.
- 1.21 “**Airport Link Lands**” has the meaning given in the Airport Authority MOU.
- 1.22 “**Airport Link Lands Sublease**” has the meaning given in the Airport Authority MOU.
- 1.23 “**Ancillary Documents**” means the Construction Contract; the Maintenance and Rehabilitation Contract; the Performance Security; [REDACTED]; [REDACTED]; and [REDACTED].
- 1.24 “**Annual Service Payment**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.25 “**Anticipated Final Completion Date**” has the meaning given in Section 25.9A(a) of the Project Agreement.
- 1.26 “**Anticipated New Municipal Infrastructure Components Acceptance Date**” has the meaning given in Section 25.13(c) of the Project Agreement.
- 1.27 “**Anticipated Substantial Completion Date**” has the meaning given in Section 25.4(a) of the Project Agreement.
- 1.28 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
  - (b) any Authority Requirement; and

- (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, the City or any City Party.
- 1.29 “**Appointed Representative**” has the meaning given in Schedule 41 – Lenders’ Direct Agreement.
- 1.30 “**Appointed Representative Notice**” has the meaning given in Schedule 41 – Lenders’ Direct Agreement.
- 1.31 “**Apprenticeship Plan**” has the meaning given in Section 20.12 of the Project Agreement.
- 1.32 “**Arbitration Act, 1991 (Ontario)**” means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
- 1.33 “**Archaeological Reports**” means collectively the following reports:
- a) [REDACTED];
  - b) [REDACTED];
  - c) [REDACTED];
  - d) [REDACTED];
  - e) [REDACTED];
  - f) [REDACTED]; and
  - g) [REDACTED].
- 1.34 “**Architect**” means an architect licensed by the Ontario Association of Architects to practice in the Province of Ontario.
- 1.35 “**As-built Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.36 “**Associated Liabilities**” has the meaning given in Section 33.7(b)(iv) of the Project Agreement.
- 1.37 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.38 “**Availability Failure**” has the meaning given in Schedule 19 - Payment Mechanism.

- 1.39 “**Background Information**” means any and all drawings, reports (including the Environmental Reports, the Archaeological Reports, the Geotechnical Reports, the Cultural Heritage Reports and the Environmental Assessments, and any other report given or otherwise referred to in the Output Specifications), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by the City or any City Party, or which was obtained from or through any other sources prior to Commercial Close.
- 1.40 “**Bank**” has the meaning given in Schedule 28 - Insurance Trust Agreement.
- 1.41 “**Bank Act (Canada)**” means the *Bank Act*, S.C. 1991, c. 46, as amended from time to time.
- 1.42 “**Bankruptcy and Insolvency Act (Canada)**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time.
- 1.43 “**Base Case Equity IRR**” means [REDACTED]%, which for greater certainty, is calculated on a pre-tax basis.
- 1.44 “**Base Relevant Insurance Cost**” has the meaning given in Schedule 24 - Insurance and Performance Security Requirements.
- 1.45 “**Beneficiary**” has the meaning given in Section 54.3(a) of the Project Agreement.
- 1.46 “**Board Order**” means an order, decision or directive governing the construction, modification, reconstruction, expansion, use, operation and/or maintenance of the Existing Trillium Line Assets and/or the System Infrastructure and issued by the Board of Transport Commissioners, the Canadian Transportation Commission (including the Railway Transport Committee), the National Transportation Agency of Canada and/or the Canadian Transportation Agency or any predecessor or successor board, commission, agency or committee of any of the foregoing.
- 1.47 [REDACTED]
- 1.48 “[REDACTED] **Vehicle Maintenance Contract**” has the meaning given in Schedule 15 – Output Specifications.
- 1.49 “**Bonds**” means any one or more of the Performance Bond and the Labour and Material Payment Bond described in Section 19 of Schedule 24 – Insurance and Performance Security Requirements, and, collectively, means all of them.
- 1.50 “**Blocked Accounts Agreement**” means the account control agreement to be entered into between Project Co, the City and [REDACTED] (or another account bank acceptable to Project Co and the City, acting reasonably) on or prior to Substantial Completion in substantially the same form as the Blocked Accounts Agreements (as defined in the Lending Agreements).
- 1.51 “**Business Corporations Act (Ontario)**” means that *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended from time to time.

- 1.52 “**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.
- 1.53 “**Business Opportunities**” has the meaning given in Section 4.1(a) of the Project Agreement.
- 1.54 “**CaGBC**” means the Canadian Green Building Council.
- 1.55 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.56 “**Canadian GAAP**” shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.
- 1.57 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.58 “**Capital Railway Rules**” has the meaning given in Schedule 15 – Output Specifications.
- 1.59 “**Carleton University**” means Carleton University and its agents and representatives.
- 1.60 “**Category 1 Utility Company**” means any one of:
- (a) [REDACTED];
  - (b) [REDACTED];
  - (c) [REDACTED];
  - (d) [REDACTED];
  - (e) [REDACTED];
  - (f) [REDACTED];
  - (g) [REDACTED];
  - (h) [REDACTED]; and
  - (i) [REDACTED].
- 1.61 “**Cemeteries Act (Revised) (Ontario)**” means the *Cemeteries Act (Revised)*, R.S.O. 1990, c. C.4, as amended from time to time.

- 1.62 “**Certificate of Recognition**” means the certification issued by IHSA to a person confirming that the health and safety management systems of such person comply with the terms, provisions and conditions of the COR Program.
- 1.63 “**Certification Services**” has the meaning given in Schedule 6 - Independent Certifier Agreement.
- 1.64 “**Certification Services Variation**” has the meaning given in Schedule 6 - Independent Certifier Agreement.
- 1.65 “**Certified H&S Inspector**” means an individual who is an employee or contractor of the IHSA and has the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 13(b) of the Project Agreement.
- 1.66 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
  - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
  - (c) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person, to direct or cause the direction of the management, actions or policies of such person.
- 1.67 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after Commercial Close.
- 1.68 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.69 “**Changed Cost for Utilities**” means an amount equal to,
- (a) the total aggregate price actually paid by Project Co for the Eligible Utilities Costs minus any Ineligible Cost Increase; minus,
  - (b) the Original Eligible Utilities Cost.
- 1.70 “**City**” means the City of Ottawa.

- 1.71 “**City Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with transit and other similar services, including the operation and maintenance of a live rail transit system on the System Infrastructure corridor.
- 1.72 “**City Commissioning**” means the commissioning activities to be carried out by the City or any other person on behalf of the City in accordance with the Commissioning Plan.
- 1.73 “**City Commissioning Period**” means the period during which the City, or any other person on behalf of the City, are performing the City Commissioning.
- 1.74 “**City Default Termination Sum**” has the meaning given in Schedule 22 - Compensation on Termination.
- 1.75 “**City Design Team**” means any of the City, its agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the System Infrastructure or the City Activities, but excluding Project Co and any Project Co Party.
- 1.76 “**City Engineer**” means the engineer appointed by the City in connection with, among other things, acceptance of the New Municipal Infrastructure Work.
- 1.77 “**City Event of Default**” has the meaning given in Section 44.1(a) of the Project Agreement.
- 1.78 “**City HR Policy**” means the City’s human resources policies and guidelines, as they may be amended from time to time and provided to Project Co in writing.
- 1.79 “**City Jointly Developed Materials**” has the meaning given in Section 49.4(a) of the Project Agreement. Any reference to “**Jointly Developed Materials**” shall mean City Jointly Developed Materials.
- 1.80 “**City Party**” means any of the City’s agents, contractors and subcontractors of any tier engaged with respect to the Project Operations and its or their directors, officers and employees, including for clarity the Operator but excluding Project Co and any Project Co Party, and “**City Parties**” shall be construed accordingly.
- 1.81 “**City Permits, Licences, Approvals and Authorizations**” means those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations, Utility Agreements, and Development Approvals which are the responsibility of the City to obtain as set out Schedule 32 – City Permits, Licences, Approvals and Authorizations, but for greater certainty shall not include any permission, consent, approval, certificate, permit, licence, agreement or authorization not set out in Schedule 32 – City Permits, Licences, Approvals and Authorizations but required by the terms of any such item set out in such Schedule.
- 1.82 “**City PLAA Deadline**” has the meaning given in 9.4(f) of the Project Agreement.

- 1.83 “**City Project Manager**” means the [REDACTED].
- 1.84 “**City Representative**” means the person designated as such by the City on or prior to Commercial Close and any permitted replacement.
- 1.85 “**City Reserve**” has the meaning given in Schedule 33 – Lands.
- 1.86 “**City Retained Dow’s Lake Latent Defect Responsibility**” means any Latent Defect in the Dow’s Lake Tunnel Structure.
- 1.87 “**City Retained Existing Structures Latent Defect Responsibility**” means any Latent Defect in the Existing City Retained Latent Defect Structures.
- 1.88 “**City Retained Latent Defect Responsibility**” has the meaning given in Section 16.9 of the Project Agreement.
- 1.89 “**City Road Allowance**” has the meaning given in Schedule 33 – Lands.
- 1.90 “**City Standards**” means the more recent version of (a) the standards of the City as of December 31, 2016, and (b) the standards of the City set out in Article 3 of Schedule 15-1 of the Output Specifications. For clarity, where there is a conflict, inconsistency or duplication of a standard referenced in items (a) and (b) of this definition of City Standards, the more recent standard shall apply.
- 1.91 “**City Taxes**” means taxes, or payments in lieu of taxes, imposed by the City and HST and property taxes for which the City is responsible pursuant to Section 35 of the Project Agreement.
- 1.92 “**City Third Party Beneficiaries**” has the meaning given in Section 62.17(a)(i) of the Project Agreement.
- 1.93 “**City Trade-Marks**” means any and all Trade-Marks used by the City in any manner whatsoever.
- 1.94 “**City Warranty Deliverables**” means, in respect of New Municipal Infrastructure only, each of the following:
- (a) a copy of a water wellness report prepared, stamped, signed and dated by a professional engineer licensed in the Province of Ontario for all applicable items under the heading “Sanitary, Storm and Combined Sewers”, “Watermains”, “Underground Storage Tanks/Superpipes”, “Oil Grit Separators”, and “Wet or Dry Pond or Other Stormwater Management Facilities”;
  - (b) for sanitary sewers, storm water sewers and combined sewers, four CDs/DVDs and one hard copy set, in PDF format and generated from the source electronic document and scanned from hard copies, of each of the following:
    - (i) material testing results;

- (ii) performance test results; and
    - (iii) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection, and where deficiencies have been identified by a CCTV inspection, delivery of evidence that all deficiencies have been rectified;
  - (c) for special infrastructure, five CDs/DVDs and two hard copy sets, in PDF format and generated from the source electronic document and not scanned from hard copies of each of the following:
    - (i) material testing results;
    - (ii) performance test results; and
    - (iii) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection and where all deficiencies have been identified by the CCTV inspection, delivery of evidence that all deficiencies have been rectified;
  - (d) if significant repairs were carried out by Project Co to correct any defects, deficiencies or non-compliant items in the New Municipal Infrastructure during the warranty inspection period for the New Municipal Infrastructure set out in Section 25.15 of the Project Agreement, a written certification of the New Municipal Infrastructure in a form acceptable to the City, acting reasonably, from professionals licensed in the Province of Ontario qualified to certify the specific type of work and equipment being certified, each such certificate shall be stamped, signed and dated by the licensed professional; and
  - (e) for trees, a written report on the results of an arborist inspection, conducted two years after planting, to demonstrate that trees are in good health.
- 1.95 “**Civil Remedies Act (Ontario)**” means the *Civil Remedies Act*, S.O. 2001, c.28, as amended from time to time.
- 1.96 “**CLA**” means the *Construction Lien Act* (Ontario).
- 1.97 “**Commercial Close**” means the date of the Project Agreement.
- 1.98 “**Commissioning Plan**” means the commissioning activities to be carried out by the City or any other person on behalf of the City in accordance with the Testing and Commissioning Plan.
- 1.99 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 – Testing and Commissioning;
  - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;

- (c) recommended by the manufacturer of any part of the System Infrastructure; and
  - (d) required to be included in the Testing and Commissioning Plan by the Independent Certifier, the City Commissioning Agent or the City Representative pursuant to Section 25.2 of the Project Agreement.
- 1.100 “**Communications System**” has the meaning given in Schedule 15-1 of the Output Specifications.
- 1.101 “**Companies’ Creditors Arrangement Act (Canada)**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended from time to time.
- 1.102 “**Compensation Event**” has the meaning given in Section 39.1(a) of the Project Agreement.
- 1.103 “**Completion Holdback**” has the meaning given in Section 25.7(a) of the Project Agreement.
- 1.104 “**Complex Structure**” means any post-tensioned or pre-tensioned structure that has undergone significant structural alteration making it difficult for personnel at the Site to predict the direction of forces or likely collapse mechanism to be experienced by such structure in connection with any Demolition of all or any part of such structure.
- 1.105 “**Complex Structure Demolition**” means any Demolition where:
- (a) significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, altered or removed;
  - (b) large penetrations are being created through slabs;
  - (c) any Demolition may cause the collapse of any building or structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a building or structure and potentially jeopardize the safety of workers, staff or the general public using such building or structure; and
  - (d) the Demolition of any building or structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any building or structure
- 1.106 “**Conditional New Municipal Infrastructure Component Acceptance Certificate**” has the meaning given in Section 25.13(f) of the Project Agreement.
- 1.107 “**Confederation Line**” means Stage 1 of the light rail transit line under construction in Ottawa, Ontario, Canada from Tunney’s Pasture in the west end of Ottawa to Blair Road in the east end of Ottawa.
- 1.108 “**Confidant**” has the meaning given in Section 50.6(a)(i) of the Project Agreement.

- 1.109 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after Commercial Close.
- 1.110 “**Construction Activities**” means construction, rehabilitation, Reinstatement Work, rectification work, and any other aspect of the Works that:
- (a) comprises the alteration, augmenting, upgrading, construction, completion, inspection, calibration, testing or commissioning of any part of the System Infrastructure ;
  - (b) comprises the assessment of any System Infrastructure;
  - (c) may affect the structural integrity of any System Infrastructure and including any such aspect of the Works carried out as part of any Force Majeure Event, Relief Event, Variation, or Innovation Proposal accepted by the City; or
  - (d) comprises Construction Clearing and Grubbing.
- 1.111 “**Construction Certificate**” means a certificate with contents described in Attachment 2 to Appendix A of Schedule 10 – Review Procedure.
- 1.112 “**Construction Clearing and Grubbing**” means the stage of the Works in which vegetation and debris is cleared from the Lands (clearing) and a root rake or similar device is employed to remove roots remaining in the soil (grubbing).
- 1.113 “**Construction Contract**” means the construction contract between Project Co and the Construction Contractor dated on or about Financial Close.
- 1.114 “**Construction Contractor**” means [REDACTED], engaged by Project Co to perform the Works and any substitute construction contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.115 “**Construction Contractor’s Direct Agreement**” means the direct agreement between the City, Project Co, the Construction Contractor and the Construction Guarantor in the form set out in Schedule 5-1 - Construction Contractor’s Direct Agreement.
- 1.116 “**Construction Document Submittals**” has the meaning given in Section 20.3(d)(ii) of the Project Agreement.
- 1.117 “**Construction Guarantor**” means [REDACTED].
- 1.118 “**Construction Lien Act (Ontario)**” means the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended from time to time.
- 1.119 “**Construction Management Plan**” or “**CMP**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.120 “**Construction Period**” means the period of time commencing on Financial Close to and including the Final Completion.

- 1.121 “**Construction Period Complaint Protocol**” has the meaning given in Schedule 18 – Communications and Stakeholder Engagement Obligations.
- 1.122 “**Construction Period Deduction**” has the meaning given in Schedule 20 – Construction Period Payments.
- 1.123 “**Construction Period Lands**” has the meaning given in Schedule 33 – Lands.
- 1.124 “**Construction Period Limit**” has the meaning given in Section 55.4(a)(i) of the Project Agreement.
- 1.125 “**Construction Period Payment**” has the meaning given in Schedule 20 – Construction Period Payments.
- 1.126 “**Construction Period Quality Failure**” has the meaning given in Schedule 20 – Construction Period Payments.
- 1.127 “**Construction Safety Management Plan**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.128 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.129 “**Contract Month**” has the meaning given in Schedule 19 - Payment Mechanism.
- 1.130 “**Contract Year**” has the meaning given in Schedule 19 - Payment Mechanism.
- 1.131 “**Contractors**” means the Construction Contractor and the Maintenance and Rehabilitation Contractor.
- 1.132 “**Contracts**” means the Construction Contract and the Maintenance and Rehabilitation Contract.
- 1.133 “**Control Party**” means:
- (a) any person with any form of direct ownership interest in Project Co;
  - (b) [REDACTED]; and
  - (c) [REDACTED].
- 1.134 “**Controlled Elements**” means any of (i) the System Infrastructure and (ii) during the Construction Period, the Site (which, for greater certainty, shall include the City Reserve to the extent it forms part of the Site).

- 1.135 “**Copyrights**” means all copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by multinational treaties or conventions.
- 1.136 “**COR Certification**” means, in respect of a person, receipt by such person of its: (i) Certificate of Recognition; and (ii) Letter of Good Standing.
- 1.137 “**COR-Certified Construction Project Co Party**” has the meaning given in Section 9.6(a)(ii) of the Project Agreement.
- 1.138 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by HMQ.
- 1.139 “**COR-Qualified Construction Project Co Party**” means one of the following:
- (a) where the Construction Contractor is a single legal entity, the Construction Contractor; or
  - (b) where the Construction Contractor is a joint venture, each member of the joint venture, or
  - (c) where the Construction Contractor is a partnership, each partner of the partnership.
- provided that each such person has current OHSAS 18001 Accreditation in good standing.
- 1.140 “**CP License**” has the meaning given in Schedule 15 – Output Specifications.
- 1.141 “**CP Rail**” means the Canadian Pacific Railway and its agents and representatives.
- 1.142 “**CPI**” means CPI-XFET for Canada, as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 26 - Dispute Resolution Procedure, which most closely resembles such index.
- 1.143 “**CPI<sub>n</sub>**” is the value of CPI on January 1 of the relevant Contract Year “n”, to be determined by reference to the relevant index in the month immediately preceding the indexation date.
- 1.144 “**CPI<sub>o</sub>**” is the value of CPI on the Inflation Base Date, to be determined by reference to the relevant index in the month immediately preceding the Inflation Base Date.
- 1.145 “**Crisis Communications Plan**” has the meaning given in Schedule 18 – Communications and Stakeholder Engagement Obligations.

- 1.146 “**Critical Comment**” means any Non-Conformance or combination of Major Comments that:
- (a) In the reasonable opinion of the City, demonstrates that Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion;
  - (b) Is persistent, ongoing or repeated; or
  - (c) In the reasonable opinion of the City, by its continued existence or through the process of rectification, would:
    - (i) result in a Critical Qualifying NCR;
    - (ii) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to traffic flow or the public transit system in the City of Ottawa;
    - (iii) prejudice or is reasonably expected to materially prejudice the performance of any Governmental Activities;
    - (iv) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any System User or City Party;
    - (v) materially increase the City’s risk or risk transfer to the City or any City Party;
    - (vi) materially adversely affect the ability of any City Party, Other Contractor or the Operator to perform their activities as permitted or contemplated by the Project Agreement;
    - (vii) materially adversely affect or change the critical path of the Project as defined in the Current Progress Works Schedule, adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date, require a material re-sequencing of the Works or cause any delay in achieving Substantial Completion; or
    - (viii) potentially compromise (A) the reputation or integrity of the City and/or any City Party; or (B) the nature of the public transit system in the City of Ottawa so as to affect public confidence in the public transit system in the City of Ottawa or the Project.
- 1.147 “**Critical Path(s)**” has the meaning given to in Schedule 12-Works Scheduling Requirements.
- 1.148 “**Critical Qualifying NCR**” has the meaning given to it in Schedule 20 – Construction Period Payments.
- 1.149 “**Crossing Agreement**” means an agreement, entered into by a previous owner or operator of part of the railway corridor which accommodates or will accommodate the

Existing Trillium Line and/or Trillium Line Extension for the purposes of establishing terms and conditions governing crossings of the railway corridor including but not limited to a utility crossings, pedestrian crossings (at grade or grade separated) and/or roadway crossings (at grade or grade separated) which agreements were assigned to and assumed by the City pursuant to the Existing Trillium Line P&S Agreements dated December 6, 2002 and March 21, 2005 respectively and described in more detail in Section 1.1 of Schedule 33 – Lands.

- 1.150 “**Crown**” means Her Majesty the Queen.
- 1.151 “**Crown Agency Act (Ontario)**” means the *Crown Agency Act*, R.S.O. 1990, c.48, as amended from time to time.
- 1.152 “**CSA**” means the Canadian Standards Association.
- 1.153 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.154 “**Cultural Heritage Reports**” means the reports set out in Appendix D to this Schedule 1 – Definitions and Interpretation and includes the following reports:
- (a) [REDACTED].
- 1.155 “**Currency Act (Canada)**” means the *Currency Act*, R.S.C., 1985, c. C-52, as amended from time to time.
- 1.156 “**Current PBS**” is, at any point in time, the latest version of the PBS which has been reviewed by the City in accordance with Schedule 10 – Review Procedure. The Current PBS shall be used for Project Co Construction Period Payment Documentation.
- 1.157 “**Custodian**” means the person appointed as Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.
- 1.158 “**Custody Agreement**” means the custody agreement between Project Co, the Lenders’ Agent, the City and the Custodian in the form set out in Schedule 3 - Custody Agreement.
- 1.159 “**Daily Performance Report**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.160 “**Data Room**” has the meaning given in section 2.4(1) of the RFP.
- 1.161 “**Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Lenders in the normal course under the Lending Agreements, provided that at any time where any portion of the interest payable to the Lenders is subject to a Hedging Agreement between Project Co and a Hedge Provider, interest payable on account of such portion of interest payable to the Lenders shall be calculated based on the fixed rate payable by Project Co under such Hedging Agreement without regard to whether such fixed rate is payable directly to a Lender or to the Hedge

Provider under the relevant Hedging Agreement and all references to interest payable to the Lenders under this Project Agreement shall be construed accordingly.

- 1.162 “**Deduction**” has the meaning given in Schedule 19 - Payment Mechanism.
- 1.163 “**Defect**” means a defect or deficiency in an item that is readily apparent on reasonable inspection or described in, properly inferable, or readily discoverable from the Background Information.
- 1.164 “**Delay Event**” has the meaning given in Section 38.1(a) of the Project Agreement.
- 1.165 “**Delivered**” has the meaning given thereto in the Revenue Vehicle Supply Contract.
- 1.166 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.167 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.168 “**Design Certificate**” means a certificate with contents described in Attachment 1 to Appendix A of Schedule 10 – Review Procedure.
- 1.169 “**Design and Construction Certification Procedure**” means the process for review and issuance of Design Certificates and Construction Certificates in accordance with Schedule 10 – Review Procedure.
- 1.170 “**Design and Construction Requirements**” means the relevant specifications, standards, procedures and other requirements for the design and construction of the System Infrastructure, the New Municipal Infrastructure, final disposition of the Existing Trillium Line Assets, all as set out in Schedule 15-2 of the Output Specifications.
- 1.171 “**Design and Construction Specifications**” means the specifications as set out in Schedule 15-2 of the Output Specifications.
- 1.172 “**Design Brief**” means a narrative document to accompany Works Submittals with contents described in Schedule 10 – Review Procedure.
- 1.173 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations, and other data prepared or obtained by Project Co relating to the design, construction, testing or monitoring of the System Infrastructure and the New Municipal Infrastructure, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.174 “**Design Development Submittals**” has the meaning given in Section 20.3(d)(i) of the Project Agreement.
- 1.175 “**Design Management Plan**” or “**DMP**” has the meaning given in Schedule 11 – Integrated Management System Requirements.

- 1.176 “**Design Review Meetings**” has the meaning given in Section 20.5(a) of the Project Agreement.
- 1.177 “**Design Team**” means [REDACTED], engaged by Project Co to design the System Infrastructure and the New Municipal Infrastructure and any substitute design team engaged by Project Co as may be permitted by the Project Agreement.
- 1.178 [Not used]
- 1.179 “**Development Approval**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Authorizations required from time to time for construction of the System Infrastructure and the New Municipal Infrastructure.
- 1.180 “**Direct Agreements**” means the Construction Contractor’s Direct Agreement and the Maintenance and Rehabilitation Contractor’s Direct Agreement.
- 1.181 “**Direct Cost**” has the meaning given in Schedule 21 -Variation Procedure.
- 1.182 “**Direct Losses**” means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.183 “**Direct or Indirect Power or Control**” means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (a) ownership, beneficial or otherwise, of greater than [REDACTED] percent of any of the shares, units or equity interests of a person;
  - (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual’s ownership, beneficial or otherwise, is equal to or exceeds [REDACTED] percent of the voting securities, units or equity interests of such person; or
  - (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.
- 1.184 “**Discount Rate**” has the meaning given in Schedule 22 - Compensation on Termination.

1.185 “**Discriminatory Change in Law**” means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:

- (a) transit systems, including transit systems whose design, construction, financing, maintenance and rehabilitation and facilities management are procured by a contract similar to the Project Agreement in relation to other similar transit systems;
- (b) the System Infrastructure or the New Municipal Infrastructure in relation to other transit systems, including light rail transit systems;
- (c) Project Co in relation to other persons; or
- (d) Persons undertaking projects for design, construction, financing, maintenance and rehabilitation and facilities management that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,

except that such Change in Law shall not be a Discriminatory Change in Law:

- (e) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
- (f) solely on the basis that its effect on Project Co is greater than its effect on other companies; or
- (g) where such Change in Law is a change in Taxes that affects companies generally.

1.186 “**Dispute**” has the meaning given in Schedule 26 – Dispute Resolution Procedure.

1.187 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 26 - Dispute Resolution Procedure.

1.188 “**Distributions**” means distributions paid in respect of the Equity Capital permitted under Schedule 4 – Wide Equity Funding Requirements.

1.189 “**Distribution Account**” means the following account opened at the [REDACTED] in the name of Project Co:

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

1.190 “**Dow’s Lake Tunnel Structure**” means the structural system of the existing Dow’s Lake tunnel, the maintenance responsibilities of which are provided for in Attachment 8 of Appendix A to Schedule 15-3 of the Output Specifications.

- 1.191 “**Dust Control Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.192 “**Early Works Agreement**” has the meaning given in Section 1.5(a) of the Project Agreement.
- 1.193 “**Earned Value**” has the meaning given in Schedule 20 – Construction Period Payments.
- 1.194 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.
- 1.195 “**Embargo Period**” means the dates when Utility Companies do not permit works to be undertaken.
- 1.196 “**Emergency**” means any situation, event, occurrence, multiple occurrences or circumstances:
- (a) that:
    - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any persons (including System Users and City Parties) or any part of or the whole of the System Infrastructure;
    - (ii) causes or may cause damage or harm to property, buildings and/or equipment;
    - (iii) constitutes a hostage situation or state of emergency declared as such by the City Representative or the City (acting reasonably);
    - (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the System Infrastructure, any part of the Lands, the conduct of Project Operations, or the conduct of Governmental Activities; or
    - (v) constitutes a period of transition to or from war;and which, in the opinion of the City, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or
  - (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) an Emergency Service Provider.
- 1.197 “**Emergency Response Plan**” means the plan to be prepared, submitted and implemented by Project Co in accordance with Schedule 15 - Output Specifications.
- 1.198 “**Emergency Service Providers**” means any Police Service, firefighting service, ambulance service, armed forces or other authority with emergency service authority

pursuant to Applicable Law which may require access to the System Infrastructure from time to time.

- 1.199 “**Enabling Works**” means that scope of work described in the City’s purchase order [REDACTED] performed by or on behalf of [REDACTED].
- 1.200 “**Encumbrances**” means the Encumbrances listed in Schedule 16 - Encumbrances and any other encumbrances deemed to be Encumbrances as described in and for the purposes set out in Section 15.2(d) of the Project Agreement.
- 1.201 “**Environmental Approvals**” means:
- (a) any authorization(s) issued by the Ontario Ministry of the Environment and Climate Change relating to the Environmental Assessments;
  - (b) the Fisheries Act Authorizations; and
  - (c) any Permits, Licences, Approvals and Authorizations relating to environmental matters.
- 1.202 “**Environmental Assessments**” means the documents listed in Appendix “B” of Schedule 1 – Definitions and Interpretation.
- 1.203 “**Environmental Law**” means all Applicable Law relating to public health or the protection of the environment or Species-at-Risk.
- 1.204 “**Environmental Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.205 “**Environmental Manager**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.206 “**Environmental Reports**” means collectively, the following reports:
- (a) [REDACTED]
  - (b) [REDACTED]
  - (c) [REDACTED]
  - (d) [REDACTED]
  - (e) [REDACTED]
  - (f) [REDACTED]
  - (g) [REDACTED]
  - (h) [REDACTED]

- (i) [REDACTED]
- (j) [REDACTED]
- (k) [REDACTED]
- (l) [REDACTED]
- (m) [REDACTED]
- (n) [REDACTED]
- (o) [REDACTED]
- (p) [REDACTED]
- (q) [REDACTED]
- (r) [REDACTED]
- (s) [REDACTED]
- (t) [REDACTED]
- (u) [REDACTED]
- (v) [REDACTED]
- (w) [REDACTED]
- (x) [REDACTED]
- (y) [REDACTED]
- (z) [REDACTED]
- (aa) [REDACTED]
- (bb) [REDACTED]
- (cc) [REDACTED]
- (dd) [REDACTED]
- (ee) [REDACTED]
- (ff) [REDACTED]
- (gg) [REDACTED]

- (hh) [REDACTED]
- (ii) [REDACTED]
- (jj) [REDACTED]
- (kk) [REDACTED]
- (ll) [REDACTED]
- (mm) [REDACTED]
- (nn) [REDACTED]
- (oo) [REDACTED]
- (pp) [REDACTED]
- (qq) [REDACTED]
- (rr) [REDACTED]
- (ss) [REDACTED]
- (tt) [REDACTED]
- (uu) [REDACTED]
- (vv) [REDACTED]
- (ww) [REDACTED]
- (xx) [REDACTED]
- (yy) [REDACTED]
- (zz) [REDACTED]
- (aaa) [REDACTED]
- (bbb) [REDACTED]
- (ccc) [REDACTED]
- (ddd) [REDACTED]
- (eee) [REDACTED]
- (fff) [REDACTED]

(ggg) [REDACTED]

- 1.207 “**Equity Capital**” means the aggregate (without double counting) of all subscribed share capital, shareholder loans, loans made or capital contributed to Project Co by any Affiliate of Project Co or of a Project Co Party, and other contributed capital of Project Co.
- 1.208 “**Equity Contribution Agreement**” means the equity contribution agreement date on or about the date hereof between Project Co and [REDACTED] and the Lenders’ Agent setting out, *inter alia*, the terms and conditions of the Equity Contributions.
- 1.209 “**Equity Contributions**” means the equity contributed to Project Co pursuant to the Equity Contribution Agreement.
- 1.210 “**Equity Gain**” means an amount equal to the greater of zero and the difference between:
- (a) the amount paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital; and
  - (b) the amount, calculated on a pre-tax basis, paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital received in full on the day of the sale of Equity Capital, taken together with all Distributions paid in respect of the Equity Capital, and taking account of the actual timing of payment of all such amounts.
- 1.211 “**Equity IRR**” means the projected internal rate of return to the Equity Provider over the full term of this Project Agreement, taking into account the aggregate of all its investments and of all Distributions made and projected to be made.
- 1.212 “**Equity Lock-Up Account**” means the following account opened at [REDACTED] in the name of Project Co:
- |                        |            |
|------------------------|------------|
| SWIFT:                 | [REDACTED] |
| Canadian Routing Code: | [REDACTED] |
| Account No.:           | [REDACTED] |
| Beneficiary Name:      | [REDACTED] |
- 1.213 “**Equity Provider**” means each of [REDACTED] and [REDACTED].
- 1.214 “**Equity Sale Amount**” means the gross amount, without taking into account any transaction costs and fees, received in consideration of a percentage of Equity Capital.
- 1.215 “**Equity Sale IRR**” means the annualized internal rate of return realized by the seller on a sale of any percentage Equity Capital, between the date on which such seller initially invests in or acquires such percentage of Equity Capital, and the date on which the sale of such percentage of Equity Capital occurs. Equity Sale IRR shall be calculated using the XIRR function in Excel, by taking into account the Equity Sale Amount, together with all Distributions received by the seller with respect to such percentage of Equity Capital, and the amount initially paid by the same seller to invest in or acquire the percentage of the

Equity Capital in question, as well as the actual timing of payment and/or receipt of all such amounts.

- 1.216 “**ESA**” means the *Endangered Species Act, 2007 (Ontario)*.
- 1.217 “**Escrow Account**” has the meaning given in Schedule 23 - Expiry Transition Procedure.
- 1.218 “**Estimate**” has the meaning given in Schedule 21 - Variation Procedure.
- 1.219 “**Estimated Fair Value**” has the meaning given in Schedule 22 - Compensation on Termination.
- 1.220 “**Event of Vandalism**” has the meaning given in Schedule 15 – Output Specifications.
- 1.221 “**Excess Equity Gain**” means an amount equal to the greater of zero and the difference between:
- (a) the Equity Sale Amount; and
  - (b) the Threshold Equity Sale Amount.
- 1.222 “**Excise Tax Act (Canada)**” means the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended from time to time.
- 1.223 “**Excusing Cause**” has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.224 “**Executive Council Act (Ontario)**” means the *Executive Council Act*, R.S.O. 1990, c. E. 25, as amended from time to time.
- 1.225 “**Existing City Retained Latent Defect Structures**” means the following structures forming part of the Existing Trillium Line Assets as more fully described in Appendix “C” of Part 2 of Schedule 15-2 - Output Specifications:
- (a) [REDACTED];
  - (b) [REDACTED];
  - (c) [REDACTED];
  - (d) [REDACTED];
  - (e) [REDACTED];
- 1.226 “**Existing Contamination**” has the meaning given in Section 16.2(a) of the Project Agreement.
- 1.227 “**Existing Trillium Line**” means the approximately 8km long passenger rail line currently operated and maintained by the City of Ottawa from Bayview Station in the

north to Greenboro Station in the south. The Existing Trillium Line also has stations at Carling, Carleton and Mooney's Bay.

- 1.228 “**Existing Trillium Line Assets**” means the infrastructure, assets and systems of the Existing Trillium Line which are located in, on or adjacent to the Lands and which are handed over by the City to Project Co at the commencement of the Shutdown Period, but excluding the Existing Vehicle Fleet.
- 1.229 “**Existing Vehicle Fleet**” has the meaning given in Schedule 15-1 of the Output Specifications.
- 1.230 “**Existing Vehicle Maintenance Standard**” means the vehicle maintenance of the Existing Vehicle Fleet in accordance with (i) the [REDACTED], (ii) the LINT DMU Inspection & Safety Rules approved by Transport Canada , and (iii) the vehicle cleaning, fueling, inspections, maintenance, and field technical support regime contemplated in the [REDACTED], including the “Annex A Terms of Reference” thereto.
- 1.231 “**Existing Walkley Yard**” has the meaning given in Schedule 15-1 of the Output Specifications.
- 1.232 “**Expanded Trillium Line**” means, collectively, the Existing Trillium Line and the Trillium Line Extension.
- 1.233 “**Expert**” has the meaning given in Schedule 26 - Dispute Resolution Procedure.
- 1.234 “**Expiry Date**” means the 27<sup>th</sup> anniversary of the Scheduled Substantial Completion Date and in no event will the Expiry Date be adjusted.
- 1.235 “**Expiry Rehabilitation Costs**” has the meaning given in Schedule 23 - Expiry Transition Procedure.
- 1.236 “**Expiry Transition Amount**” has the meaning given in Schedule 23 - Expiry Transition Procedure.
- 1.237 “**Expiry Transition Procedure**” means the procedure for expiry transition described in Schedule 23 - Expiry Transition Procedure.
- 1.238 “**Expiry Transition Process Asset Preservation Work Schedule**” has the meaning given in Schedule 15 – Output Specifications.
- 1.239 “**Expiry Transition Requirements**” has the meaning given in Schedule 23 - Expiry Transition Procedure.
- 1.240 “**Expiry Transition Security**” has the meaning given in Schedule 23 - Expiry Transition Procedure.
- 1.241 “**Expiry Transition Works**” has the meaning given in Schedule 23 - Expiry Transition Procedure.

- 1.242 “**Expiry Transition Works Costs**” has the meaning given in Schedule 23 - Expiry Transition Procedure.
- 1.243 “**Extension Contractor**” has the meaning given in Schedule 36 – System Extension.
- 1.244 “**External IMS Audit**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.245 “**Facilities**” has the meaning given in Schedule 15 – Output Specifications.
- 1.246 “**Factory Acceptance Test**” or “**FAT**” has the meaning given in Schedule 14 – Testing and Commissioning.
- 1.247 “**Failure Points**” has the meaning given in Schedule 19 - Payment Mechanism.
- 1.248 “**Fare Control Service Provider**” means the Third Party Contractor responsible for supply, installation, operation and non-custodial maintenance of all fare control equipment.
- 1.249 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including completion of all Minor Deficiencies, other than any minor work that is seasonal in nature and cannot be completed by the Final Completion Date.
- 1.250 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.10 of the Project Agreement.
- 1.251 “**Final Completion Date**” means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, as such date shall be stated therein.
- 1.252 “**Final Completion Notice**” has the meaning given in Section 25.10(b) of the Project Agreement.
- 1.253 “**Final Completion Countdown Notice**” has the meaning given in Section 25.9A(a) of the Project Agreement.
- 1.254 “**Final Design Development**” or “**FDD**” has the meaning given in Schedule 10 – Review Procedure.
- 1.255 “**Final New Municipal Infrastructure Works Acceptance Certificate**” means the certificate issued by the City Engineer to Project Co confirming New Municipal Infrastructure Works Acceptance.
- 1.256 “**Final New Municipal Infrastructure Works Requirement**” has the meaning given in Section 25.13(j) of the Project Agreement.
- 1.257 “**Final New System Infrastructure Condition Report**” has the meaning given in Schedule 23 – Expiry Transition Procedure.

- 1.258 “*Financial Administration Act, R.S.O. 1990, c. F.12*” means the *Financial Administration Act, R.S.O. 1990, c. F.12*, as amended from time to time.
- 1.259 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.260 “**Financial Close Target Date**” means Friday March 29, 2019, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.261 “**Financial Model**” means the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.262 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations.
- 1.263 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.264 “**Fisheries Act Authorizations**” means the authorization(s) issued by Fisheries and Oceans Canada in connection with the Project, and any amendment or supplement to the authorization(s) as may be issued after Commercial Close or required in connection with the Project from time to time during the Project Term.
- 1.265 “**Float**” has the meaning given to in Schedule 12 - Works Scheduling Requirements .
- 1.266 “**Force Majeure**” has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.267 “*Freedom of Information and Protection of Privacy Act (Ontario)*” means the *Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31*, as amended from time to time.
- 1.268 “*Funeral, Burial and Cremations Services Act, 2002 (Ontario)*” means the *Funeral, Burial and Cremations Services Act, S.O. 2002, c. 33*, as amended from time to time.
- 1.269 “**Future Known Expansion**” includes, without limitation and subject to further approval by the City, the future works in the design of the Project listed in Article 2.9(d) of Part 1 in Schedule 15-2 of the Output Specifications.
- 1.270 “**Geotechnical Reports**” means the reports listed in Appendix E to this Schedule 1 – Definitions and Interpretation.
- 1.271 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily

be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

- 1.272 “**Government Sensitive Information**” means any information which is designated as such by the City from time to time, or which a reasonable person, having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, and (ii) any record, the disclosure of which could be injurious to the interests of the City.
- 1.273 “**Governmental Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands or the System Infrastructure by any Governmental Authority or Emergency Service Provider, and includes the City Activities.
- 1.274 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the City, any aspect of the performance of the Project Agreement, the operation of the Trillium Line Extension or the Governmental Activities, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.275 “**Guarantors**” means the Construction Guarantor and the Maintenance and Rehabilitation Guarantor.
- 1.276 “**Guideway**” has the meaning given in Schedule 15 – Output Specifications.
- 1.277 “**H&S Certification Default Event**” has the meaning given in Section 9.6(c) of the Project Agreement.
- 1.278 “**H&S Certification Maintenance Plan**” has the meaning given in Section 9.6(c)(vii)(B) of the Project Agreement.
- 1.279 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 9.6(c)(vii)(B) of the Project Agreement.
- 1.280 “**H&S Construction Inspection**” has the meaning given in Section 13(b) of the Project Agreement.
- 1.281 “**H&S Construction Inspection Report**” has the meaning given in Section 13(c) of the Project Agreement.
- 1.282 “**H&S Construction Re-Inspection**” has the meaning given in Section 13(e)(ii) of the Project Agreement.
- 1.283 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 13(e)(iii) of the Project Agreement.

- 1.284 “**H&S Conviction**” has the meaning given in Section 43.1(a)(xix) of the Project Agreement.
- 1.285 “**H&S Maintenance Inspection**” has the meaning given in Section 13(b) of the Project Agreement.
- 1.286 “**H&S Maintenance Inspection Report**” has the meaning given in Section 13(d) of the Project Agreement.
- 1.287 “**H&S Maintenance Re-Inspection**” has the meaning given in Section 13(e)(ii) of the Project Agreement.
- 1.288 “**H&S Maintenance Re-Inspection Report**” has the meaning given in Section 13(e)(iv) of the Project Agreement.
- 1.289 “**Handover**” means, as applicable, the successful handover, by Project Co of,
- (a) the New Municipal Infrastructure, or a component thereof, to the City in accordance with Section 25.13 of the Project Agreement including, for clarity, the delivery of the Final New Municipal Works Acceptance Certificate by the City Engineer to Project Co in accordance with Section 25.13(i) of the Project Agreement; or
  - (b) the New Utility Infrastructure to the Utility Companies and in accordance with the requirements agreed to between Project Co and the Utility Companies.
- 1.290 “**Has Knowledge**” or “**Have Knowledge**” means:
- (a) a natural person knows or has knowledge when information is received or acquired by the person under the circumstances in which a reasonable person would take cognizance of it; and
  - (b) corporation knows or has knowledge when information has been received or has come to the attention of:
    - (i) a director or officer of the corporation; or
    - (ii) a senior employee of the corporation with responsibility for matters to which the information relates,
  - (c) the City knows or has knowledge when information has been received or has come to the attention of:
    - (i) [REDACTED];
    - (ii) [REDACTED]; or
    - (iii) [REDACTED];

under circumstances in which a reasonable person would take cognizance of it and, in the case of Project Co, shall include matters referred to in subparagraph (a) or (b) above with respect to the Contractors, and “**Knowledge**” has a corresponding meaning.

- 1.291 “**Hazardous Substances**” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.292 “**Health and Safety Certification Maintenance Plan**” has the meaning given in Section 9.6(b)(iv)(B) of the Project Agreement.
- 1.293 “**Health and Safety Certification Reinstatement Plan**” has the meaning given in Section 9.6(b)(iii)(B) of the Project Agreement.
- 1.294 “**Hedge Provider**” means a person that has entered into a Hedging Agreement with Project Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.295 “**Hedging Agreement**” means an agreement relating to the hedging of interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.296 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.297 “**IHSA**” means Infrastructure Health and Safety Association, a not-for-profit occupational safety organization formed on January 1, 2010 that provides health and safety training material and services to Ontario construction, electrical utilities and transportation industries, and is accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing, or such other person so accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing.
- 1.298 “**IMS Audit**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.299 “**Initial Capital Investment Date**” has the meaning given in Schedule 20 – Construction Period Payments.
- 1.300 “**Income Tax Act (Canada)**” means the *Income Tax Act*, R.S.C., 1985, c. 1, as amended from time to time.
- 1.301 “**Income Tax Act (Ontario)**” means the *Income Tax Act*, R.S.O. 1990, c. I.2, as amended from time to time.
- 1.302 “**Indemnifiable Taxes**” has the meaning given in Section 33.7(b)(iii) of the Project Agreement.
- 1.303 “**Indemnifier**” has the meaning given in Section 54.3(a) of the Project Agreement.

- 1.304 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.305 “**Independent Certifier Agreement**” means the contract entered into between Project Co, the City and the Independent Certifier in substantially the form attached hereto as Schedule 6 - Independent Certifier Agreement.
- 1.306 “**Independent Inspector**” has the meaning given in Schedule 23 - Expiry Transition Procedure.
- 1.307 “**Independent Safety Assessor**” means an independent party appointed by Project Co to assess:
- (a) the safety and security of the Works prior to Substantial Completion; and
  - (b) changes to System Infrastructure after Substantial Completion, if any.
- 1.308 “**Indirect Losses**” has the meaning given in Section 55.1(a) of the Project Agreement.
- 1.309 “**Inflation Base Date**” has the meaning given in Schedule 19 - Payment Mechanism.
- 1.310 “**Injurious Affection**” has the meaning given in the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended from time to time.
- 1.311 “**Innovation Proposal**” has the meaning given in Section 37.2(b) of the Project Agreement.
- 1.312 “**IPFP Framework**” means the alternative financing and procurement project framework which complies with the principles set out in *MOI’s Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector*.
- 1.313 “**Inspection and Test Plan**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.314 “**Insurance Adjustment**” has the meaning given in Section 7.3 of Schedule 24 - Insurance and Performance Security Requirements.
- 1.315 “**Insurance Cost Differential**” has the meaning given in Section 7.1(c) of Schedule 24 - Insurance and Performance Security Requirements.
- 1.316 “**Insurance Policies**” has the meaning given in Schedule 28 - Insurance Trust Agreement.
- 1.317 “**Insurance Proceeds**” has the meaning given in Schedule 28 - Insurance Trust Agreement.

- 1.318 “**Insurance Review Date**” has the meaning given in Schedule 24 - Insurance and Performance Security Requirements.
- 1.319 “**Insurance Review Period**” has the meaning given in Schedule 24 - Insurance and Performance Security Requirements.
- 1.320 “**Insurance Trust Account**” means Account No. [REDACTED] at [REDACTED].
- 1.321 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between the City, Project Co, the Lenders’ Agent and the Account Trustee in the form set out in Schedule 28 - Insurance Trust Agreement.
- 1.322 “**Integrated Management Plans**” or “**IMP**” have the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.323 “**Integrated Management System**” and “**IMS**” have the meanings given in Schedule 11 – Integrated Management System Requirements.
- 1.324 “**Integrated System Extension**” has the meaning given in Schedule 36 – System Extension.
- 1.325 “**Intellectual Property**” means all intellectual and industrial property, including without limitation: (i) Trade-Marks; (ii) Patents; (iii) Copyrights; (iv) inventions, whether or not patentable, whether or not reduced to practice or whether or not yet made the subject of a pending patent application or applications; (v) ideas and conceptions of potentially patentable subject matter, including, without limitation, any patent disclosures, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications; (vi) trade secrets and confidential, technical or business information (including ideas, formulas, compositions, designs, inventions, and conceptions of inventions whether patentable or unpatentable and whether or not reduced to practice); (vii) whether or not confidential, technology (including know-how and show-how), manufacturing and production processes and techniques, methodologies, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, marketing and business data, pricing and cost information, business and marketing plans; (xiv) copies and tangible embodiments of all the foregoing, in whatever form or medium; (ix) all rights to obtain and rights to apply for any of the foregoing and all rights therein provided by multinational treaties or conventions; (x) all rights under any agreements or instruments with respect to items in (i) to (ix) above; and (xi) all rights to sue and recover and retain damages and costs and attorneys’ fees for present and past infringement or other violation of any of the intellectual property rights hereinabove set out.
- 1.326 “**Intellectual Property Rights**” means all right, title and interest in, to and under the Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after Commercial Close created, brought into existence, acquired, used or intended to be used by Project Co, any Subcontractor or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:

- (a) the Works, including the design and construction of the System Infrastructure (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
  - (b) the Maintenance and Rehabilitation Services, including the maintenance, improvement, testing and rehabilitation of the System Infrastructure;
  - (c) any other Project Operations; or
  - (d) the Project Agreement.
- 1.327 **“Interim Maintenance Period”** has the meaning given in Section 7 of Schedule 19 – Payment Mechanism.
- 1.328 **“Interim Substantial Completion”** means the point at which (i) the System Infrastructure, the New Municipal Infrastructure, the New Utility Infrastructure have been completed in accordance with the Project Agreement; (ii) the Payment Certifier appointed pursuant to Section 15.3(g) of the Project Agreement has certified the substantial performance of the Construction Contract and the related certificate of substantial performance of the Works is published pursuant to Section 32(1) of the CLA; and (iii) all requirements for Readiness for Revenue Service described in Schedule 14 – Testing and Commissioning have been satisfied in respect of the System Infrastructure and the New Municipal Infrastructure as a whole, in each case, other than in respect of Minor Deficiencies and Remaining Works. For clarity, Interim Substantial Completion shall include the successful completion of the SIT required to verify the System Infrastructure will: comply with the AODA/ADA requirements relative to the New Revenue Vehicles; comply with all the required clearances relative to the New Revenue Vehicles.
- 1.329 **“Interim Substantial Completion Certificate”** means, following the delivery of the Interim Substantial Completion Notice, the certificate to be issued by the Independent Certifier in accordance with Section 25.3 of the Project Agreement.
- 1.330 **“Interim Substantial Completion Date”** means the date on which Interim Substantial Completion is achieved as evidenced by the Interim Substantial Completion Certificate, as such date shall be stated therein.
- 1.331 **“Internal IMS Audit”** has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.332 **“International Financial Reporting Standards”** means international financial reporting standards within the meaning of the IAS Regulation 1606/2002 and in effect from time to time, consistently applied.
- 1.333 **“ISO 45001 Accreditation”** means, in respect of an entity, such entity having received certification in respect of its health and safety management systems that such systems comply with the requirements of ISO 45001.

- 1.334 “**ISO 45001 Compliant Maintenance and Rehabilitation Project Co Party**” means one of the following:
- (a) where the Maintenance and Rehabilitation Contractor is a single legal entity, the Maintenance and Rehabilitation Contractor; or
  - (b) where the Maintenance and Rehabilitation Contractor is a joint venture, each member of the joint venture; or
  - (c) where the Maintenance and Rehabilitation Contractor is a partnership, each partner of the partnership.
- 1.335 “**ISO 45001 Accredited Maintenance and Rehabilitation Project Co Party**” has the meaning given in Section 9.6(b)(ii) of the Project Agreement.
- 1.336 “**Joint Insurance Cost Report**” has the meaning given in Schedule 24 - Insurance and Performance Security Requirements.
- 1.337 “**Key Individual**” means those Project Co Parties listed in Schedule 9 - Key Individuals.
- 1.338 “**Key Works Milestones**” has the meaning given in Schedule 12 - Works Scheduling Requirements.
- 1.339 “**Labour and Material Payment Bond**” means, collectively, the Labour and Material Payment Bond and the Multiple Obligee Rider to Labour and Material Payment Bond in the form attached as Appendix C to Schedule 24 – Insurance and Performance Security Requirements.
- 1.340 “**Lands**” has the meaning given in Schedule 33 – Lands.
- 1.341 “**Lands Table**” has the meaning given in Schedule 33 – Lands.
- 1.342 “**Lane Closure**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.343 “**Lane Closure Adjustment**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.344 “**Lane Closure Target Letter**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.345 “**Latent Defect**” means a shortcoming, failure, fault, inadequacy, weakness, deficiency or imperfection whether caused by inappropriate or inadequate design, construction, installation, affixation or material, lack of or improper maintenance, negligence or wilful damage by a third party that is not visible or readily apparent through normal inspection, investigation or use or that is not properly inferable from the age and prior use of the item; provided that: (i) any condition described in, properly inferable, readily apparent or readily discoverable from the Background Information; (ii) any condition that (A) is attributable to the failure by Project Co to perform the Project Operations in accordance with the Project Agreement, (B) is caused by Project Co or any Project Co Party, or (C) is attributable to Project Co’s design or construction means and methods, shall not constitute a Latent Defect.

- 1.346 “**LEED**” means Leadership in Energy & Environmental Design.
- 1.347 “**LEED Rating System**” means the CaGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System for New Construction and Major Renovations, LEED® Canada-NC 2009.
- 1.348 “**Lenders**” means any or all of the persons acting arm’s length to Project Co and each Project Co Party who provide the financing, and for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns and any Affiliate of Project Co or a Project Co Party.
- 1.349 “**Lenders’ Agent**” has the meaning given in Schedule 41 – Lenders’ Direct Agreement.
- 1.350 “**Lenders’ Consultant**” means [REDACTED].
- 1.351 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between the City, the Lenders’ Agent and Project Co in the form set out in Schedule 41 - Lenders’ Direct Agreement.
- 1.352 “**Lending Agreements**” means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project Scope, including, for greater certainty, any interest rate hedging arrangements entered into between Project Co and any hedge providers in connection with the foregoing and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the financing of the Works or the refinancing of the Works.
- 1.353 “**Letter of Credit**” means the letter or letters of credit delivered in accordance with Section 9.1(2) of the Request for Proposals.
- 1.354 “**Letter of Credit Provider**” has the meaning given in the Request for Proposals.
- 1.355 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by ISHA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.356 “**Line Replaceable Unit**” means a modular component which is removed and replaced at the field level to restore the end item to an operational ready condition.
- 1.357 “**Limited Modification Rights**” has the meaning given in Schedule 35 – Intellectual Property.
- 1.358 “**Limitations Act, 2002 (Ontario)**” means the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, as amended from time to time.
- 1.359 “**Listed PLAA Tracking System**” has the meaning given in Section 9.4(h) of the Project Agreement.

- 1.360 “**Listed Project Co PLAAs**” means those Project Co Permits, Licences, Approvals and Authorizations listed in Appendix F to this Schedule 1 – Definitions and Interpretation.
- 1.361 “**Liquid Market**” has the meaning given in Schedule 22 - Compensation on Termination.
- 1.362 “**Load-Path Diagram**” means a graphically illustrated diagram that indicates in all relevant detail (including by use of colour-coded arrows indicating the directions of forces caused by dead loads, live loads, vertical loads and lateral loads) how the structural loads are transferred throughout a building or structure that is to be the subject of a Demolition.
- 1.363 “**Longstop Date**” has the meaning given in Section 43.1(a)(ii) of the Project Agreement.
- 1.364 “**Look-ahead Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.365 “**Maintenance and Rehabilitation Contract**” means the agreement between Project Co and the Maintenance and Rehabilitation Contractor or such other party as shall be approved by the City to perform the Maintenance and Rehabilitation Services with respect to the System Infrastructure.
- 1.366 “**Maintenance and Rehabilitation Contractor**” means [REDACTED] engaged by Project Co to perform the Maintenance and Rehabilitation Services and any substitute person engaged by Project Co to perform such work as may be permitted by the Project Agreement.
- 1.367 “**Maintenance and Rehabilitation Contractor’s Direct Agreement**” means the direct agreement to be entered into amongst the City, the Maintenance and Rehabilitation Contractor and the Maintenance and Rehabilitation Guarantor, in the form set out in Schedule 5-2 – Maintenance and Rehabilitation Contractor’s Direct Agreement.
- 1.368 “**Maintenance and Rehabilitation Guarantor**” means [REDACTED].
- 1.369 “**Maintenance and Rehabilitation Plan**” has the meaning given in Schedule 15-1 of the Output Specifications.
- 1.370 “**Maintenance and Rehabilitation Management Plan**” or “**M&RMP**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.371 “**Maintenance and Rehabilitation Requirements**” means the maintenance and rehabilitation requirements as set out in Schedule 15-3 of the Output Specifications.
- 1.372 “**Maintenance and Rehabilitation Services**” has the meaning given in Schedule 15-1 of the Output Specifications, as such work and services may from time to time be varied in accordance with the Project Agreement, but specifically excluding Governmental Activities and the Works.
- 1.373 “**Maintenance and Rehabilitation Submittals**” has the meaning given in Section 1.1 of Part B of Schedule 10 – Review Procedure.

- 1.374 “**Maintenance Committee**” has the meaning given in Section 12.1(a) of the Project Agreement.
- 1.375 “**Maintenance Period**” means the period from the Substantial Completion Date and expiring at midnight on the Termination Date.
- 1.376 “**Maintenance Period Limit**” has the meaning given in Section 55.4(a)(ii) of the Project Agreement.
- 1.377 “**Maintenance Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.378 “**Maintenance Vehicles**” has the meaning given in Schedule 15 – Output Specifications”.
- 1.379 “**Major Comment**” means any Non-Conformance that:
- (a) contains significant deficiencies;
  - (b) is reasonably expected to result in a Medium Qualifying NCR; or
  - (c) the continued existence of which is reasonably expected to result in Project Co being unable to satisfy the requirements of Substantial Completion by the Longstop Date.
- 1.380 “**Major Maintenance Schedule**” has the meaning given in Section 16.5(c) of the Project Agreement.
- 1.381 “**Make Good**”, “**Made Good**” and derivatives thereof, means repairing, restoring, refurbishing, rehabilitating or performing filling operation on the Works as required under the Project Agreement or any existing components disturbed due to the Works, to at least the condition existing at the commencement of the Works, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.
- 1.382 “**Maximum Service Payment**” has the meaning given in Schedule 22 - Compensation on Termination.
- 1.383 “**Medium Qualifying NCR**” has the meaning given to it in Schedule 20 – Construction Period Payments.
- 1.384 “**Milestone**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.385 “**Minimum Required Fleet**” has the meaning given in Schedule 15-1 – Output Specifications: Technical Terms and Reference Documents.
- 1.386 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Substantial Completion, and that would not materially impair:

- (a) the public's, System Users', or the City's use and enjoyment of the System Infrastructure or any third parties use and enjoyment of their respective System Infrastructure (including any City Commissioning);
- (b) the performance of the Governmental Activities;
- (c) the performance of the Maintenance and Rehabilitation Services by Project Co;
- (d) safety, security, or traffic flow on the System Infrastructure in any relevant respect.

For greater certainty Minor Deficiencies shall not be applicable to nor shall Minor Deficiencies include defects, deficiencies and items of outstanding work arising from or related to the supply of the New Revenue Vehicles.

1.387 “**Minor Deficiencies List**” has the meaning given in Section 25.7(a) of the Project Agreement.

1.388 “**Minor Comment**” means any Non-Conformance that:

- (a) generally conforms to the requirements of the Project Agreement, but in which immaterial deficiencies have been found; or
- (b) the continued existence of which is not reasonably expected to result in Project Co becoming unable to satisfy the requirements for Substantial Completion but may result in a Minor Deficiency.

1.389 “**Minor System User Contamination**” means Contamination where the costs of clean up or remediation shall not exceed \$[REDACTED] on a per occurrence basis (and not in the aggregate).

1.390 “**Mislocated Utility Infrastructure**” means:

- (a) Utility Infrastructure that is discovered more than 200mm horizontally from the provided surveyed point via any Quality Level A investigation in the Subsurface Utility Engineering Report;
- (b) Utility Infrastructure that is discovered more than 150mm vertically from the provided surveyed point via any Quality Level A investigation in a Subsurface Utility Engineering Report;
- (c) Utility Infrastructure that is discovered more than 1500mm horizontally from the location provided via any Quality Level B investigation in a Subsurface Utility Engineering Report;
- (d) Utility Infrastructure that is discovered more than 2000mm horizontally from the location provided in the Quality Level C investigation in a Subsurface Utility Engineering Report

- (e) Utility Infrastructure that is discovered more than 3000mm horizontally from the location provided in the Quality Level D investigation in a Subsurface Utility Engineering Report; or
- (f) Utility Infrastructure that is owned by the City that is discovered more than 600mm vertically from the location provided in a Subsurface Utility Engineering Report,

provided, however, that the following shall be excluded from the definition of “**Mislocated Utility Infrastructure**”:

- (g) any Utility Infrastructure that is a service connection;
- (h) any Utility Infrastructure that is above-ground, aerial, or at-grade;
- (i) any of the following Utility Infrastructure that is owned by the City;
  - (A) watermains of nominal diameter less than 150mm;
  - (B) combined sewers or storm sewers of nominal diameter less than 300mm;
  - (C) sanitary sewers of nominal diameter less than 225mm; and
  - (D) street lighting and traffic signal cables.
- (j) any Utility Infrastructure relocations carried out at the Site subsequent to Commercial Close, including with respect to,
  - (A) the Works; and
  - (B) Third Party Works and Additional Works.

1.391 “**Modification**” has the meaning given in Schedule 35 – Intellectual Property.

1.392 “**MOI**” means Her Majesty The Queen in right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.

1.393 “**Monitoring Notice**” has the meaning given in Section 30.5(a) of the Project Agreement.

1.394 “**Monthly Equity Distribution Ratio**” has the meaning given in the Financial Model.

1.395 “**Monthly Previously Paid HST Amount**” means, if applicable, a monthly HST amount to be determined as provided for below which in the aggregate is equal to the amount of the Section 35.1(c) Payment. The amount of each Monthly Previously Paid HST Amount shall be:

- (a) the amount of the Section 35.1(c) Payment amortized on a straight line basis over the Monthly Service Payments due over the remainder of the Maintenance Period

following the payment of the Section 35.1(c) Payment subject to an alternative basis on which to amortize the remaining unapplied Section 35.1(c) Payment as provided for by Applicable Law in which case the City shall determine the Monthly Previously Paid HST Amount in accordance with such Applicable Law, provided that the City may, at any time, proceed to obtain an advance ruling under the *Excise Tax Act* (Canada) (or rely upon an existing advance ruling under the *Excise Tax Act* (Canada)) in respect to some other basis for amortizing the remaining unapplied Section 35.1(c) Payment over the Monthly Service Payments due over the remainder of the Maintenance Period, and in such event, the remaining unapplied Section 35.1(c) Payment may be amortized over the Monthly Service Payments in a manner provided for in the advance ruling if the City so determines in its sole discretion;

- (b) communicated by the City to Project Co in writing at the same time that the City pays Project Co the Section 35.1(c) Payment; and
- (c) credited to the City in each Monthly Service Payment invoice sent by Project Co to the City following the payment of the Section 35.1(c) Payment.

- 1.396 “**Monthly Progress Report**” means a monthly progress report submitted by Project Co in accordance with Part 2 of Schedule 31 – Works Report Requirements.
- 1.397 “**Monthly Service Payment**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.398 “**MTO**” means the Ministry of Transportation of Ontario and its agents and representatives.
- 1.399 “**Multiple Obligee Rider to Labour and Material Payment Bond**” means the Multiple Obligee Rider amending the Labour and Material Payment Bond to add the City and Lenders as additional named Obligees, in the form attached as Exhibit 1 to Appendix C of Schedule 24 – Insurance and Performance Security Requirements.
- 1.400 “**Multiple Obligee Rider to Performance Bond**” means the Multiple Obligee Rider amending the Performance Bond to add the City and Lender as additional named Obligees, in the form attached as Exhibit 1 to Appendix B of Schedule 24 – Insurance and Performance Security Requirements.
- 1.401 “**NCC**” means the National Capital Commission and its agents and representatives.
- 1.402 “**NCC Act**” means the *National Capital Act* (Canada).
- 1.403 “**NCC FLUDA**” means the federal land use, design approval of the NCC under section 12 of the National Capital Act required in respect of the change of use of, or erection, alteration, extension or demolition of a building or other work on, Crown Lands which are “public lands” within the “National Capital Region” (as such terms are defined in the NCC Act), as indicated in Appendix 2 – Lands – After – Acquired Lands – Crown Lands to this Schedule 1, which approval may include and be subject to conditions.

- 1.404 “**NMI Minor Deficiencies**” has the meaning given to it in “Section 25.13(f) of the Project Agreement.
- 1.405 “**NMI Minor Deficiency Deduction**” has the meaning given in Section 25.13(f) of the Project Agreement.
- 1.406 “**New Agreement**” has the meaning given in Schedule 22 - Compensation on Termination.
- 1.407 “**New Municipal Infrastructure**” means the infrastructure to be installed, relocated, upgraded, reinstated, downsized, restored, designed and/or built by Project Co for the City in accordance with Article 14 of Part 1 of Schedule 15-2 Output Specifications to the Project Agreement.
- 1.408 “**New Municipal Infrastructure Component**” means a component or element of the New Municipal Infrastructure, as set out in the Works Schedule.
- 1.409 “**New Municipal Infrastructure Component Acceptance**” means the point in time at which the City Engineer determines that an individual New Municipal Infrastructure Component has been completed in accordance with the Project Agreement and all requirements for New Municipal Infrastructure Component Acceptance described in the Output Specifications in respect of New Municipal Infrastructure Works have been satisfied, the New Municipal Infrastructure Component Works Requirements have been satisfied and the issuance by the City Engineer of a New Municipal Infrastructure Component Acceptance Certificate.
- 1.410 “**New Municipal Infrastructure Component Acceptance Certificate**” means, in respect of an individual New Municipal Infrastructure Component, the certificate issued by the City Engineer to Project Co confirming acceptance of the applicable New Municipal Infrastructure Component.
- 1.411 “**New Municipal Infrastructure Component Acceptance Date**” means, in respect of an individual New Municipal Infrastructure Component, the date on which the City Engineer has issued a New Municipal Infrastructure Component Acceptance Certificate in respect of such New Municipal Infrastructure Component.
- 1.412 “**New Municipal Infrastructure Component Acceptance Notice**” has the meaning given in Section 25.13(d) of the Project Agreement.
- 1.413 “**New Municipal Infrastructure Component Works Requirements**” has the meaning given in Section 25.13(d) of the Project Agreement.
- 1.414 “**New Municipal Infrastructure Work**” means the temporary and permanent installation, relocation, upgrading, reinstatement, restoration, downsizing, designing and/or building works by Project Co relating to the New Municipal Infrastructure for the City, carried out in connection with or as part of the Project Operations.
- 1.415 “**New Municipal Infrastructure Works Acceptance**” means the receipt by Project Co of New Municipal Infrastructure Component Acceptance Certificates for all New

Municipal Infrastructure Components and completion and satisfaction of all Final New Municipal Infrastructure Works Requirements.

- 1.416 “**New Municipal Infrastructure Works Acceptance Date**” means the date on which New Municipal Infrastructure Works Acceptance is achieved.
- 1.417 “**New Municipal Infrastructure Works Component Countdown Notice**” has the meaning given in Section 25.13(c) of the Project Agreement.
- 1.418 “**New Revenue Vehicles**” means the Revenue Vehicles supplied under the Revenue Vehicle Supply Contract under Section 9.11(a) of the Project Agreement.
- 1.419 “**New Utility Infrastructure**” means the Utility Infrastructure to be installed, relocated, upgraded, reinstated, restored, designed and/or built by Project Co for a Utility Company in accordance with the Project Agreement with reference to the applicable City Standards and Utility Company standards.
- 1.420 “**New Walkley Yard**” has the meaning given in Schedule 15 – Output Specifications.
- 1.421 “**New Walkley Yard Facilities Management Services**” means facilities management services to be delivered by Project Co at the New Walkley Yard as specified in Schedule 15 - Output Specifications.
- 1.422 “**Noise and Vibration Control Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.423 “**Noise and Vibration Survey**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.424 “**Non-Conformance**” means any failure by Project Co to perform any of its obligations under the Project Agreement in respect of any aspect of the Works and which failure is not rectified by Project Co within the applicable time period, if any, stipulated in this Project Agreement.
- 1.425 “**Non-Conformance Tracking System**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.426 “**Non-Default Termination Sum**” has the meaning given in Schedule 22 - Compensation on Termination.
- 1.427 “**Non-Disclosure Agreement**” has the meaning given in Schedule 26 - Dispute Resolution Procedure.
- 1.428 “**Non-Project Co Cause**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.429 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.430 “**Non-Revenue Vehicle**” has the meaning given in Schedule 15 – Output Specifications.

- 1.431 “**Notice**” has the meaning given in Section 59.1(a) of the Project Agreement.
- 1.432 “**Notice of Dispute**” has the meaning given in Schedule 26 - Dispute Resolution Procedure.
- 1.433 “**Notice of Pending Claim**” has the meaning given in Section 38.2(a) of the Project Agreement.
- 1.434 “**NRC**” means the National Research Council of Canada and its agents and representatives.
- 1.435 “**OC Transpo**” means OC Transpo and its agents and representatives .
- 1.436 “**Occupational Health and Safety Act (Ontario)**” means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended from time to time.
- 1.437 “**Off-Peak Period**” has the meaning given in Schedule 15 – Output Specifications.
- 1.438 “**OHSAS 18001**” means the international standard for occupational health and safety management systems developed by the Occupational Health and Safety Advisory Services Project Group, a British body formed to develop the standard.
- 1.439 “**OHSAS 18001 Accreditation**” means, in respect of an entity, such entity having received certification in respect of its health and safety management systems that such systems comply with the requirements of OHSAS 18001.
- 1.440 “**Ontario Heritage Act (Ontario)**” means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended from time to time.
- 1.441 “**Operator**” means any person directly engaged by the City of Ottawa to carry out the Operator Tasks.
- 1.442 “**Operator Tasks**” means all of the tasks to be performed by the Operator in connection with the operation of the Trillium Line as set out in Schedule 15 – Output Specifications.
- 1.443 “**Operator Transition**” has the meaning given in Section 26.7(a) of the Project Agreement.
- 1.444 “**Operator Transition Notice**” has the meaning given in Section 26.7(b) of the Project Agreement.
- 1.445 “**Order**” has the meaning given in Schedule 28 - Insurance Trust Agreement.
- 1.446 “**Other Contractor**” means an Additional Contractor or a Third Party Contractor.
- 1.447 “**Other Works**” means the Additional Works and the Third Party Works.
- 1.448 “**Output Specifications**” means Schedule 15 – Output Specifications, and includes Schedule 15-1 – Technical Terms and Reference Documents, Schedule 15-2 - Design and

Construction Requirements and Schedule 15-3 – Maintenance and Rehabilitation Requirements.

- 1.449 “**Outside Substantial Completion Date**” means August 1, 2022.
- 1.450 “**Ownership**” has the meaning given in Schedule 35 – Intellectual Property.
- 1.451 “**PA Parties**” or “**PA Party**” has the meaning given in Schedule 6 - Independent Certifier Agreement.
- 1.452 “**PAR Meeting**” has the meaning given in Section 11.6(f) of the Project Agreement
- 1.453 “**PAR Meeting Expiry Date**” has the meaning given in Section 11.6(g) of the Project Agreement.
- 1.454 “**Party**” means either the City or Project Co, and “**Parties**” means collectively the City and Project Co, but, for greater certainty, such definitions do not include MOI.
- 1.455 “**Party Representative**” and “**Party Representatives**” have the meanings given in Schedule 26 - Dispute Resolution Procedure.
- 1.456 “**Passenger**” means a natural person using any segment of the Extended Trillium Line.
- 1.457 “**Patents**” includes all national (including the United States and Canada), regional and multinational statutory invention registrations, patents, patent registrations, patent applications, provisional patent applications, industrial designs, industrial models, including all reissues, divisions, continuations, continuations-in-part, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application.
- 1.458 “**Payment Adjustment Report**” has the meaning given in Section 32.6(i)(ii) of the Project Agreement.
- 1.459 “**Payment Certifier**” means the professional architect of record or engineer of record for the Project.
- 1.460 “**Payment Commencement Date**” means the date that is two (2) Business Days after the Substantial Completion Date.
- 1.461 “**Payment Compensation Amount**” means, with respect to an amount and a specified period of time, such amount multiplied by (i) such period of time in days divided by the actual number of days in the current year multiplied by (ii) the rate of interest per annum in effect on each such day equal to [REDACTED]% over the rate of interest per annum quoted by National Bank of Canada from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.

- 1.462 “**Payment Mechanism**” means the payment mechanism set out in Schedule 19 - Payment Mechanism.
- 1.463 “**Payment Periods**” means the payment periods of one calendar month (as adjusted in this definition) established by the City for each Contract Year, provided that the first Payment Period in the first Contract Year and the last Payment Period in the last Contract Year may be a shorter period as a result of the timing of the Payment Commencement Date and the Expiry Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.464 “**PBS**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.465 “**PBS Update**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.466 “**PBS Submittal**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.467 “**Peak Period**” has the meaning given in Schedule 15 – Output Specifications.
- 1.468 “**Performance Audit**” has the meaning given in Section 30.1(a) of the Project Agreement.
- 1.469 “**Performance Bond**” means any of the Performance Bonds described in Section 17 of Schedule 24 – Insurance and Performance Security Requirements.
- 1.470 “**Performance Criteria**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.471 “**Performance Guarantees**” means the guarantees to Project Co in respect of the Construction Contract and the Maintenance and Rehabilitation Contract provided by the Construction Guarantor and the Maintenance and Rehabilitation Guarantor, respectively.
- 1.472 “**Performance Monitoring Program**” means the monitoring of performance by Project Co through the Non-Conformance reporting process detailed in Schedule 11 – Integrated Management System Requirements and the Performance Monitoring Reports prepared and submitted in accordance with Schedule 11 – Integrated Management System Requirements.
- 1.473 “**Performance Monitoring Report**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.474 “**Performance Security**” means the performance security required pursuant to Article 19 of Schedule 24 – Insurance and Performance Security Requirements.
- 1.475 “**Permits, Licences, Approvals and Authorizations**” means the City Permits, Licences, Approvals and Authorizations and the Project Co Permits, Licences, Approvals and Authorizations.

- 1.476 “**Permitted Borrowing**” means any additional financing approved by the City in accordance with Section 1.9 of Schedule 21 - Variation Procedure to the Project Agreement.
- 1.477 “**Personal Information**” means all personal information (as the term “personal information” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or any Project Co Party other than personal information of the employees of Project Co or the Project Co Parties and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from the City in respect of the Project.
- 1.478 “**Personal Information Protection and Electronic Documents Act (Canada)**” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended from time to time.
- 1.479 “**Phase 1 and Phase 2 Environmental Site Assessment Reports**” means the reports set out in Appendix B to this Schedule 1 – Definitions and Interpretation.
- 1.480 “**Planned Major Maintenance Activity**” has the meaning given in Section 16.5(c) of the Project Agreement.
- 1.481 “**Planned Value**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.482 “**Police Service**” means the Royal Canadian Mounted Police, the Ontario Provincial Police, the Ottawa Police Service and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.483 “**Post-Installation Checkout**” or “**PICO**” has the meaning given in Schedule 14 – Testing and Commissioning.
- 1.484 “**Pre-Existing Environmental Site Conditions**” means the environmental condition of the Lands as set out in the Environmental Reports.
- 1.485 “**Pre-Final Design Development**” or “**PFDD**” has the meaning given in Schedule 10 – Review Procedure.
- 1.486 “**Private Capital Advance Confirmations**” has the meaning given in Schedule 20 – Construction Period Payments.
- 1.487 “**Private Capital Funding Confirmations**” has the meaning given in Schedule 20 – Construction Period Payments.
- 1.488 “**Preparatory Activities**” has the meaning given in Schedule 15 – Output Specifications.
- 1.489 “**Proceeding At Risk**” has the meaning given in Section 11.6(g) of the Project Agreement.

- 1.490 “**Proceeding At Risk Matter**” has the meaning given in Section 11.6(a)(ii) of the Project Agreement.
- 1.491 “**Proceeding At Risk Notice**” has the meaning given in Section 11.6(a) of the Project Agreement.
- 1.492 “*Proceedings Against the Crown Act (Ontario)*” means the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, as amended from time to time.
- 1.493 “**Proceeds Account**” means the following account opened at [REDACTED] in the name of Project Co:
- |                        |            |
|------------------------|------------|
| SWIFT:                 | [REDACTED] |
| Canadian Routing Code: | [REDACTED] |
| Account No.:           | [REDACTED] |
| Beneficiary Name:      | [REDACTED] |
- 1.494 “**Proceeds Account Cascade**” has the meaning given in Schedule 4 – Wide Equity Funding Requirements.
- 1.495 “**Product**” or “**Products**” means material, machinery, equipment and fixtures forming the New Municipal Infrastructure but does not include machinery and equipment used to prepare, fabricate, convey or erect the New Municipal Infrastructure, which is referred to as construction machinery and equipment.
- 1.496 “**Professional Engineer**” means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.
- 1.497 “**Prohibited Act**” has the meaning given in Section 58.1(a) of the Project Agreement.
- 1.498 “**Project**” has the meaning given in the recitals to the Project Agreement.
- 1.499 “**Project Agreement**” has the meaning given in the recitals to the Project Agreement.
- 1.500 “**Project Agreement Arbitration**” has the meaning given in Schedule 26- Dispute Resolution Procedure.
- 1.501 “**Project Co**” means [REDACTED] and any successor or permitted assign.
- 1.502 “**Project Co Assumed Responsibilities for the Dow’s Lake Tunnel Structure**” has the meaning given in Section 16.7(a) of the Project Agreement.
- 1.503 “**Project Co Communications Protocol**” has the meaning given in Schedule 18 – Communications and Stakeholder Engagement Obligations Protocol.
- 1.504 “**Project Co Construction Communications Plan**” has the meaning given in Schedule 18 – Communications and Stakeholder Engagement Obligations Protocol.

- 1.505 “**Project Co Event of Default**” has the meaning given in Section 43.1(a) of the Project Agreement.
- 1.506 “**Project Co Group**” means Project Co together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co.
- 1.507 “**Project Co Operator Transition Services**” has the meaning given in Section 26.7(a) of the Project Agreement.
- 1.508 “**Project Co Party**” means:
- (a) the Construction Contractor;
  - (b) the Maintenance and Rehabilitation Contractor;
  - (c) any person engaged by Project Co, and/or any of the Contractors from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them); and
  - (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “**Project Co Parties**” shall be construed accordingly.
- 1.509 “**Project Co Permits, Licences, Approvals and Authorizations**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Project Operations in accordance with the Project Agreement and as required by Applicable Law, and including those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations which are the responsibility of Project Co to obtain as set out in Schedule 32 – City Permits, Licences, Approvals and Authorizations or which is the responsibility of Project Co to perform or fulfill as set out in Schedule 32 – City Permits, Licences, Approvals and Authorizations, and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including, to the extent applicable, all Development Approvals and Utility Agreements, and the approval of the Fire Marshal of Ontario), needed to perform the Project Operations in accordance with the Project Agreement and as required by Applicable Law, but other than City Permits, Licences, Approvals and Authorizations.
- 1.510 “**Project Co Proposal Extracts**” means the documents attached as Schedule 13 - Project Co Proposal Extracts.
- 1.511 “**Project Co Representative**” means the person designated as such by Project Co on or prior to Commercial Close and any permitted replacement.
- 1.512 “**Project Co Testing and Commissioning**” means the commissioning activities to be carried out by Project Co in order to achieve Readiness for Revenue Service as set forth in Schedule 14 – Testing and Commissioning.

- 1.513 “**Project Co Testing and Commissioning Coordinator**” has the meaning given in Schedule 14 – Testing and Commissioning.
- 1.514 “**Project Co Utility Works**” means the works relating to New Utility Infrastructure carried out by Project Co as part of the Project Operations, including design, construction, installation, commissioning, protection, removal and relocation of duct banks, poles, pole lines, conduits, gas pipes, oil pipes, sewers and telephone and telecommunication lines, and related and ancillary works.
- 1.515 “**Project Co Variation Notice**” has the meaning given in Schedule 21 - Variation Procedure.
- 1.516 “**Project Co’s Expiry Transition Process Asset Preservation Work Schedule**” has the meaning given in Schedule 15 – Output Specifications.
- 1.517 “**Project Data**” has the meaning given in Schedule 35 – Intellectual Property.
- 1.518 “**Project Documents**” means the Ancillary Documents.
- 1.519 “**Project Insurance Change**” has the meaning given in Section 7.1(f) of Schedule 24 - Insurance and Performance Security Requirements.
- 1.520 “**Project Know-How**” means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through Project Co or any Project Co Party and revealed to or discovered by the City, whether before or after Commercial Close, which may be connected in any way to:
- (a) the Works, including the design and construction of the System Infrastructure;
  - (b) the Maintenance and Rehabilitation Services, including the maintenance, rehabilitation, improvement and testing of the System Infrastructure;
  - (c) any other Project Operations; or
  - (d) the Project Agreement.
- 1.521 “**Project Operations**” means:
- (a) the performance of the Works;
  - (b) the performance of the Maintenance and Rehabilitation Services; and
  - (c) the performance of all other obligations of Project Co under the Project Agreement.
- 1.522 “**Project Term**” means the period commencing on Commercial Close and expiring at midnight on the Termination Date.
- 1.523 “**Project Term Lands**” has the meaning given in Schedule 33 – Lands.

- 1.524 “**Proponent**” has the meaning given in the Request for Proposals.
- 1.525 “**Proprietor**” has the meaning given in Section 50.6(a) of the Project Agreement.
- 1.526 “**Protesters**” has the meaning given in Section 9.7(a) of the Project Agreement.
- 1.527 “**Province**” means Her Majesty the Queen in right of Ontario.
- 1.528 “**Qualifying Tender**” has the meaning given in Schedule 22 - Compensation on Termination.
- 1.529 “**Quality Documentation**” means all documentation to be prepared, submitted (where applicable) and implemented by Project Co in accordance with Schedule 11 – Integrated Management System Requirements.
- 1.530 “**Quality Failure**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.531 “**Quality Manager**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- 1.532 “**Rail Transit Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the design, construction, maintenance or rehabilitation of rail transit systems.
- 1.533 “**Railway Company**” means CP Rail and any other railway company that owns or operates a rail service, any part of which is on any part of the Lands during the Project Term and “**Railway Companies**” means all of them
- 1.534 “**Readiness for Revenue Service**” has the meaning given in Schedule 14 – Testing and Commissioning.
- 1.535 “**Record Drawings**” means signed and sealed drawings prepared by the inspecting professional engineer, using as-built information, after verifying in detail the actual conditions of the completed project or applicable components as they are constructed, including any changes that were initiated due to site conditions or other causes and where all such changes are clearly identified through redlines or by means of any other format agreed by the City.
- 1.536 “**Recovery Amount**” has the meaning given in Section 54.3(g) of the Project Agreement.
- 1.537 “**Recovery Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.538 “**Recovery Schedule Report**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.539 “**Rectification Time**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.540 “**Refinancing**” has the meaning given in Schedule 27 – Refinancing.

- 1.541 “**Reimbursement Event**” has the meaning given in Section 31.5(a) of the Project Agreement.
- 1.542 “**Reinstatement Plan**” has the meaning given in Section 29.2(a) of the Project Agreement.
- 1.543 “**Reinstatement Work**” has the meaning given in Section 29.1(a) of the Project Agreement.
- 1.544 “**Release**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.545 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Rail Transit Specific Change in Law.
- 1.546 “**Relevant Conviction**” means a charge or conviction, at any time within the previous 6 years, of any offense: (i) of moral turpitude in Canada or elsewhere; (ii) for which records exist under the *Criminal Records Act*; or (iii) otherwise designated as a Relevant Conviction by the City from time to time, and that conviction remains in effect at that time and is one for which a pardon has not been granted.
- 1.547 “**Relevant Insurance**” has the meaning given in Section 7.1(g) of Schedule 24 - Insurance and Performance Security Requirements.
- 1.548 “**Relevant Insurance Inception Date**” has the meaning given in Section 7.1(h) of Schedule 24 - Insurance and Performance Security Requirements.
- 1.549 “**Relief Event**” has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.550 “**Remaining Works**” means:
- (a) the provision of the remaining New Revenue Vehicles not yet Delivered to the New Walkley Yard in compliance with Schedule 15-2 Part 8;
  - (b) the testing and commissioning of the New Revenue Vehicles in accordance with 15-2 Part 8 and Schedule 14;
  - (c) completion of the training of the City Operators on the New Revenue Vehicles;
  - (d) completion of a 14 day trial running period simulating full revenue service, and safety certification of the New Revenue Vehicles; and
  - (e) the delivery of all manuals, spare parts, and materials associated with the New Revenue Vehicles otherwise required by the Project Agreement.

For greater certainty, Remaining Works do not constitute Minor Deficiencies.

- 1.551 “**Remedial Period**” has the meaning given in Schedule 19 – Payment Mechanism.

- 1.552 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on February 19, 2016, as amended from time to time.
- 1.553 “**Request for Utility Works Payment**” has the meaning given in Section 20.13(g) of the Project Agreement.
- 1.554 “**Response**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.555 “**Response Time**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.556 “**Restricted Payment Conditions**” has the meaning given in Schedule 4 – Funding Requirements.
- 1.557 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
  - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
  - (c) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;
  - (d) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under *the Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “**Restricted Person**” is made hereunder;
  - (e) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;

- (f) is subject to a material claim of the City under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in the City’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
  - (g) has a material interest in the production of tobacco products.
- 1.558 **“Restrictions and Requirements”** means the restrictions, qualifications and requirements contained in the Lands Table forming part of Schedule 33 – Lands.
- 1.559 **“Revenue Service”** has the meaning given in Schedule 15 – Output Specifications.
- 1.560 **“Revenue Service Commencement”** means the commencement of Passenger service to the public on the System by the City on the Revenue Service Commencement Date.
- 1.561 **“Revenue Service Hours”** has the meaning given in Schedule 15 – Output Specifications.
- 1.562 **“Revenue Service Train Kilometres”** has the meaning given in Schedule 19 – Payment Mechanism.
- 1.563 **“Revenue Vehicle Contract Costs”** has the meaning given in Section 9.11(b) of the Project Agreement.
- 1.564 **“Revenue Vehicle Deficiency”** means a defect or deficiency in a Revenue Vehicle such that the Revenue Vehicle does not meet those Revenue Vehicle Technical Specifications that are not Technical Specifications (Built to Specification).
- 1.565 **“Revenue Vehicles”** has the meaning given in Schedule 15 – Output Specifications.
- 1.566 **“Revenue Vehicle Payment Request”** has the meaning given in Section 9.11(c) of the Project Agreement.
- 1.567 **“Revenue Vehicle Supplier”** means [REDACTED].
- 1.568 **“Revenue Vehicle Supply Contract”** has the meaning given in Section 9.11(a) of the Project Agreement.
- 1.569 **“Review Procedure”** means the procedure set out in Schedule 10 - Review Procedure.
- 1.570 **“Review Procedure Activities”** means:
- (a) performance of the requirements of Schedule 10 – Review Procedure for all Works Submittals required to be delivered prior to Substantial Completion, including:

- (i) all Submittals by Project Co;
  - (ii) City review periods and responses regarding Works Submittals;
  - (iii) amendment by Project Co, if required; and
  - (iv) re-submission by Project Co, if required;
- (b) any other submission activities required by Project Co pursuant to the Project Agreement
- 1.571 “**Review Procedure Activities Register**” means a register of Review Procedure Activities which shall include the submission dates and review periods for all Works Submittals required under Schedule 10 – Review Procedure, Schedule 12 – Work Scheduling Requirements, and elsewhere in the Project Agreement.
- 1.572 “**Revised New System Infrastructure Condition Report**” has the meaning given in Schedule 23 – Expiry Transition Procedure.
- 1.573 “**Road Cut Permit – Major Construction (Civil Works and Utility Relocation)**” has the meaning given in Schedule 15 – Output Specifications.
- 1.574 “**Road Safety Audit**” has the meaning given in Schedule 15-1 of the Output Specifications.
- 1.575 “**Road Sections**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.576 “**RVSC Cash Allowance Account**” means the RVSC Cash Allowance Account to be established in accordance with Section 9.11 of the Project Agreement.
- 1.577 “**RVSC Cash Flow**” means that cash flow defined by the RVSC Milestone dates and corresponding amounts set forth Appendix G.
- 1.578 “**RVSC Fixed Cost Amount**” means \$[REDACTED].
- 1.579 “**RVSC Milestone**” has the meaning assigned to the term Milestone in the Revenue Vehicle Supply Contract.
- 1.580 “**Safety and Security Management Committee**” has the meaning given in Schedule 15 – Output Specifications.
- 1.581 “**Safety Management Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.582 “**Schedule**” means a schedule to the Project Agreement.
- 1.583 “**Scheduled Final Completion Date**” means the date that is 202 days following Substantial Completion.

- 1.584 “**Scheduled Passenger Facility Hours**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.585 “**Scheduled Revenue Service Train Kilometres**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.586 “**Scheduled Substantial Completion Date**” means August 10, 2022, as such date may be amended pursuant to Section 38 of the Project Agreement.
- 1.587 “**Security**” has the meaning given in Schedule 41 – Lenders’ Direct Agreement.
- 1.588 “**Security Documents**” has the meaning given in Schedule 41 – Lenders’ Direct Agreement.
- 1.589 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.590 “**Service Failure**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.591 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
  - (b) adversely affect access by Project Co to such markets.
- 1.592 “**Shutdown Period**” means the period beginning on May 3, 2020.
- 1.593 “**Shutdown Period Service Obligations**” means the obligations in respect of the care, maintenance and repair of the Existing Trillium Line Assets and the Existing Vehicle Fleet during the Shutdown Period as set out in Schedule 15-3.
- 1.594 “**Shutdown Period Transition and Maintenance Plan**” has the meaning given in Section 10 of the Output Specifications.
- 1.595 “**Signalling and Train Control System**” has the meaning given in Schedule 15 – Output Specifications.
- 1.596 “**Site**” means, at any time and from time to time, that portion of the Lands,
- (a) on which Project Co or any Project Co Party is engaged in any construction or demolition activities or is otherwise engaged in completing the Works;
  - (b) on which any of the Works have been commenced but not completed in their entirety;

- (c) that are hoarded, cordoned, or otherwise fenced off by Project Co, and any Lands immediately surrounding such hoarding, cordons or fencing; or
  - (d) within the active construction footprint of the Works.
- 1.597 “**Site Acceptance Test**” or “**SAT**” has the meaning given in Schedule 14 – Testing and Commissioning.
- 1.598 “**Site Conditions**” means the condition of the Lands, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.599 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by the City to be performed having an individual cost or aggregate cost with other linked works, including facilities and equipment, of a minor nature, not exceeding \$[REDACTED] (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of an Availability Failure or Quality Failure, will increase the cost to Project Co of performing the Project Operations or will materially hinder Project Co in the performance of the Maintenance and Rehabilitation Work.
- 1.600 “**Species-at-Risk**” means any member of a species, subspecies, variety or genetically or geographically distinct population of animal, plant or other organism that is listed in the Species at Risk in Ontario List maintained pursuant to the ESA and any analogous federal list under the *Species at Risk Act* (Canada), and any other species that has been classified as being threatened or endangered under Applicable Law.
- 1.601 “**Stakeholders**” means individuals and organizations with an interest in the Project, including those listed in Schedule 15 - Output Specifications, but excluding the City.
- 1.602 “**Standard Operating Procedures**” has the meaning given in Schedule 15 – Output Specifications.
- 1.603 “**Standards & Guidelines for Conservation of Provincial Heritage Properties**” means the Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the *Ontario Heritage Act* (Ontario) on April 28, 2010, as amended from time to time.
- 1.604 “**Start-Up Meeting**” has the meaning given in Section 20.4(a) of the Project Agreement.
- 1.605 “**Station**” or “**Stop**” has the meaning given in Schedule 15 – Output Specifications.
- 1.606 “**Station Plaza**” means a plaza at a Station.
- 1.607 “**Structures**” has the meaning given in Schedule 15 – Output Specifications.
- 1.608 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including any of the Contractors, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.

- 1.609 “**Subcontractor Losses**” has the meaning given in Schedule 22 - Compensation on Termination.
- 1.610 “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including any of the Contractors, and any other Subcontractor at any tier in relation to any aspect of the Project Operations.
- 1.611 “**Submittal**” means a Works Submittal or a Maintenance and Rehabilitation Submittal.
- 1.612 “**Substantial Completion**” means the point at which (i) the System Infrastructure, the New Municipal Infrastructure, the New Utility Infrastructure have been completed in accordance with the Project Agreement; (ii) the Payment Certifier appointed pursuant to Section 15.3(g) of the Project Agreement has certified the substantial performance of the Construction Contract and the related certificate of substantial performance of the Works is published pursuant to Section 32(1) of the CLA; and (iii) all requirements for Readiness for Revenue Service described in Schedule 14 - Testing and Commissioning, other than in respect of Minor Deficiencies, have been satisfied in respect of the System Infrastructure and the New Municipal Infrastructure as a whole.
- 1.613 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.3 of the Project Agreement.
- 1.614 “**Substantial Completion Countdown Notice**” has the meaning given in Section 25.4(a) of the Project Agreement.
- 1.615 “**Substantial Completion Date**” means the date on which Substantial Completion is achieved as evidenced by the Substantial Completion Certificate, as such date shall be stated therein.
- 1.616 “**Substantial Completion Notice**” has the meaning given in Section 25.3(b) of the Project Agreement.
- 1.617 “**Substantial Completion Payment**” means \$[REDACTED].
- 1.618 “**Substantial Completion Payment Commencement Date**” means the date that is two Business Days after the Substantial Completion Date.
- 1.619 “**Substitute**” has the meaning given in the applicable Direct Agreement.
- 1.620 “**Subsurface Utility Engineering Reports**” or “**SUE**” means the [REDACTED].
- 1.621 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.622 “**System Event**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.623 “**System Extension**” has the meaning given in Schedule 36 – System Extension.

- 1.624 “**System**” means the rapid transit system to be designed, constructed, supplied, tested, commissioned and maintained by Project Co in accordance with this Project Agreement, in, on, over or under any part of the Lands as part of the Works, including, without limitation, the Vehicles, the System Infrastructure, all site services, utilities, roadways and parking areas required to support such System Infrastructure, all supporting systems and improvements and all other Works, improvements, modifications, additions, demolitions, removals of the Existing Trillium Line Assets required in each case to meet the Output Specifications and all requirements of the Permits, Licenses, Approvals and Authorizations, whether or not in the course of construction, installation, completion or maintenance.
- 1.625 “**System Infrastructure**” at any time means the infrastructure, assets and systems to be designed, constructed and installed by Project Co in, on, over or under any part of the Lands as part of the Works to create the System in accordance with the Project Agreement, and includes those parts of the Existing Trillium Line Assets which Project Co designs, utilizes, relocates, refurbishes, upgrades, reinstates, restores, rebuilds and integrates into the System, but, for purposes of determining the Maintenance and Rehabilitation Services, excludes the New Municipal Infrastructure.
- 1.626 “**System Infrastructure Condition Report**” has the meaning given in Schedule 23 – Expiry Transition Procedure.
- 1.627 “**System Infrastructure Performance Demonstration**” has the meaning given in Schedule 23 – Expiry Transition Procedure.
- 1.628 “**System User**” means any member of the public, any City Party and any other person that is on or about the New Municipal Infrastructure, the System or is otherwise making use of the System Infrastructure for any purpose.
- 1.629 “**Systems Integration Dispute**” means a dispute related to the integration and function of the communications systems.
- 1.630 “**Systems Integration Test**” or “**SIT**” has the meaning given in Schedule 14 – Testing and Commissioning.
- 1.631 “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “Taxes” shall not include City Taxes.
- 1.632 “**Technical Information**” has the meaning given in Schedule 35 – Intellectual Property.
- 1.633 “**Technical Reports**” means the Environmental Reports, the Geotechnical Reports and the Archaeological Reports.
- 1.634 “**Technical Submission Deadline**” means August 10, 2018.

- 1.635 “**Temporary Street Occupancy Permit**” means the consent(s) and permit(s) to perform street work and for temporary street occupation as set out in the City of Ottawa Road Activity Bylaw (By-law No. 2003-445) and Encroachments on City Highways (By-law No. 2003-446, Streets and Sidewalks, as such consent(s) and permit(s) are related to those portions of the City Road Allowance required by Project Co for the Works.
- 1.636 “**Terminal Station**” has the meaning given in Schedule 15 – Output Specifications.
- 1.637 “**Termination Date**” means the earlier of the Expiry Date and such other date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.638 “**Testing and Commissioning Manuals**” has the meaning given in Section 1.6(f) of Schedule 14 – Testing and Commissioning.
- 1.639 “**Testing and Commissioning Plan**” has the meaning given in Section 1.3(a) of Schedule 14 – Testing and Commissioning.
- 1.640 “**Testing and Commissioning Schedule**” has the meaning given in Section 1.3(m) of Schedule 14 – Testing and Commissioning.
- 1.641 “**Testing and Commissioning Team**” has the meaning given in Schedule 14 – Testing and Commissioning.
- 1.642 “**Third Party Access Agreements**” has the meaning given in Schedule 33 – Lands.
- 1.643 “**Third Party Arbitration**” has the meaning given in Schedule 26 - Dispute Resolution Procedure.
- 1.644 “**Third Party Contractors**” means any person (not being, for the avoidance of doubt, Project Co or any Project Co Party or Additional Contractors) that carries out any Third Party Works.
- 1.645 “**Third Party Litigation**” has the meaning given in Schedule 26 - Dispute Resolution Procedure.
- 1.646 “**Third Party Works**” means any work performed by a Third Party Contractor on the Lands, including works in relation to,
- (a) an Encumbrance; and
  - (b) Utility Work and work pursuant to a Utility Agreement or an encroachment permit or other permitting authority of any Governmental Authority under Applicable Law.
- 1.647 “**Total Capital Cost**” means \$[REDACTED].
- 1.648 “**Threshold Equity Sale Amount**” means an Equity Sale Amount that would result in an Equity Sale IRR equal to the Base Case Equity IRR.

- 1.649 “**Track**” has the meaning given in Schedule 15-1 of the Output Specifications.
- 1.650 “**Trade-Marks**” means all trademarks, service marks, trade dress, logos, distinguishing guises and indicia, trade names, corporate names, business names, domain names, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including, but not limited to, all marks registered in the Canadian Intellectual Property Office and the trademark offices of other nations throughout the world, and all rights therein provided by multinational treaties or conventions.
- 1.651 “**Train Control System**” has the meaning given in Schedule 15 – Output Specifications.
- 1.652 “**Train Kilometres Availability Failure**” has the meaning given in Schedule 19 – Payment Mechanism
- 1.653 “**Train Kilometres Availability Failure Deduction**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.654 “**Traffic and Transit Management Plan**” or “**TTMP**” has the meaning given in Schedule 15-1 of the Output Specifications.
- 1.655 “**Traffic Control Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.656 “**Transit Operations Control Centre**” or “**TOCC**” has the meaning given in Schedule 15 – Output Specifications.
- 1.657 “**Transport Canada Safe Operation Requirements**” means Transport Canada’s track safety standards for safe operation on the Existing Trillium Line at the respective track speeds applicable to the operation of the Existing Trillium Line as set out in Schedule 15- Output Specifications.
- 1.658 “**Trespasser**” has the meaning given in Section 9.7(a) of the Project Agreement.
- 1.659 “**Trial Running**” has the meaning given in Schedule 15-1 of the Output Specifications.
- 1.660 “**Trillium Line Extension**” means the approximately 12km long extension from Greenboro Station to Limebank Station.
- 1.661 “**Tunnels**” has the meaning given in Schedule 15 – Output Specifications.
- 1.662 “**Uninsurable Event**” means any event which arises directly and solely from an Uninsurable Risk.
- 1.663 “**Uninsurable Risk**” has the meaning given in Schedule 24 - Insurance and Performance Security Requirements to the Project Agreement.
- 1.664 “**Unit Rate Price**” has the meaning given in Schedule 7 – Mobility Matters.

- 1.665 “**Unpaid Construction Period Payments**” has the meaning given in Schedule 20 – Construction Period Payments.
- 1.666 “**Updated Shared Use Agreement**” has the meaning given in Schedule 32 – City Permits, Licenses, Approvals and Authorizations.
- 1.667 “**Utilities**” means energy/power supplies, communications, data transmission and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.668 “**Utility Agreement**” means any agreement entered into by Project Co with a Utility Company in connection with the design removal, construction, installation, repair, preservation, relocation or maintenance of Utility Infrastructure in, on, under, over or adjacent to the Lands, and includes any site or other permits issued thereunder or pursuant thereto, all as amended, supplemented or replaced from time to time.
- 1.669 “**Utility Baseline Report**” means the Utility Baseline Report submitted by Project Co in its proposal in response to the Request for Proposals and included herein as Schedule 40 – Utility Baseline Report.
- 1.670 “**Utility Company**” means the owner or operator of any Utility Infrastructure.
- 1.671 “**Utility Company Self-Performed Works**” means the temporary and permanent installation, protection, removal, relocation, upgrading, reinstatement, restoration, downsizing, designing, and/or building works relating to Utility Infrastructure or New Utility Infrastructure carried out by a Utility Company under a Utility Agreement in connection with or as part of the Project Operations.
- 1.672 “**Utility Company Works Cash Allowance**” has the meaning given in Section 20.13 of the Project Agreement.
- 1.673 “**Utility Infrastructure**” means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, lighting, data, communications, gas, oil and petroleum products, water, storm water or sewage, wireless, or other similar commodity or substance which serve the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, and all related infrastructure.
- 1.674 “**Utility Works**” means, collectively, the Project Co Utility Works and the Utility Company Self Performed Works.
- 1.675 “**Utility Works Cost**” means the actual cost of performing the Utility Company Self Performed Works.
- 1.676 “**Utility Works Fee**” has the meaning given in Section 20.13(f) of the Project Agreement.
- 1.677 “**Variation**” has the meaning given in Schedule 21 - Variation Procedure.
- 1.678 “**Variation Confirmation**” has the meaning given in Schedule 21 - Variation Procedure.

- 1.679 “**Variation Directive**” has the meaning given in Schedule 21 - Variation Procedure.
- 1.680 “**Variation Enquiry**” has the meaning given in Schedule 21 - Variation Procedure.
- 1.681 “**Variation Procedure**” means the procedure set out in Schedule 21 - Variation Procedure.
- 1.682 “**Vehicle Maintenance Records**” has the meaning given in Section 16.5(c) of the Project Agreement.
- 1.683 “**Vehicles**” means , collectively, the Revenue Vehicles and the Maintenance Vehicles.
- 1.684 “**Via Rail**” means Via Rail Canada and its agents and representatives.
- 1.685 “**Volume Payment**” has the meaning given in Schedule 19 – Payment Mechanism.
- 1.686 “**Warning Notice**” has the meaning given in Section 30.4(a) of the Project Agreement.
- 1.687 [Not used]
- 1.688 “**WHMIS**” means the system for labelling, warning and worker education of Hazardous Substances used in the workplace, commonly referred to as workplace hazardous materials information system, prescribed by Applicable Law over the delivery, storage and use of Hazardous Substances in the Province of Ontario.
- 1.689 “**Workplace Safety and Insurance Act, 1997 (Ontario)**” means the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sch. A, as amended from time to time.
- 1.690 “**Works**” means all design and construction works to be performed by Project Co under the Project Agreement to meet the Output Specifications, including the supply of New Revenue Vehicles, the New Municipal Infrastructure Work, the Project Co Utility Works and the design, construction, refurbishing, alteration, integration, installation, testing, commissioning and completion of the System Infrastructure, including rectification of any Minor Deficiencies, and any other activities required to enable or facilitate the commencement of the Maintenance and Rehabilitation Services, and all other work under the Permits, Licences, Approvals and Authorizations, except for (i) all work which is expressly described in Schedule 32 – City Permits, Licences, Approvals and Authorizations as being the responsibility of the City, and (ii) any City Commissioning.
- 1.691 “**Works Area Micro-Schedule**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.692 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;
  - (b) occurs after Commercial Close;

- (c) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the System Infrastructure which is similar in nature to the Works but is not Works or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
  - (d) was not reasonably foreseeable at Commercial Close by an experienced contractor carrying out activities and/or performing design and/or other operations similar to those to be carried out and/or performed by any Project Co Party in relation to the Project.
- 1.693 “**Works Committee**” has the meaning given in Section 11.1(a) of the Project Agreement.
- 1.694 “**Works Report**” means those updates and reports to be issued by Project Co in accordance with Schedule 31 – Works Report Requirements.
- 1.695 “**Works Schedules**” has the meaning given in Schedule 12 – Works Scheduling Requirements.
- 1.696 “**Works Submittal**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.697 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).
2. **Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
  - 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
  - 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.

- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 - Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1 - Definitions and Interpretation, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words “Project Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 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.
- 2.10 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.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the

same or similar subject matter from time to time replacing, extending, consolidating or amending the same.

- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of any City Party shall be construed having regard to the interactive nature of the activities of the City Party and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications;
  - (b) acts or omissions in the ordinary course of the Governmental Activities and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the Maintenance and Rehabilitation Services; or
  - (c) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and the City's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "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 the Project Agreement taken as a whole; and
  - (b) "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".

- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “such as” 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.
- 2.22 Where the Project 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.
- 2.23 Where the Project Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before 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.
- 2.24 Where the Project 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.
- 2.25 Any reference to time of day or date means the local time or date in Ottawa, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day measured from midnight to midnight.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or the City they shall be construed and interpreted as synonymous and to read “Project Co shall” or “the City shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to the City shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the transit system construction and maintenance industry in Ontario will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

Adjusted amount or sum = Amount or sum x  $\frac{CPI_n}{CPI_o}$

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in the Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information and in respect of the Lands carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

**APPENDIX A  
INTENTIONALLY DELETED**

**APPENDIX B  
PHASE 1 AND PHASE 2 ENVIRONMENTAL SITE ASSESSMENT REPORTS**

	<b>Report Title</b>	<b>Author/Firm</b>	<b>Report Date</b>	<b>Report Type &amp; Status</b>
1	[REDACTED]	[REDACTED]	June 14, 2017	Phase II Environmental Site Assessment, Complete
2	[REDACTED]	[REDACTED]	June 14, 2017	Phase II Environmental Site Assessment, Complete
3	[REDACTED]	[REDACTED]	June 6, 2017	Contamination Overview Study, Complete
4	[REDACTED]	[REDACTED]	September 22, 2017	Groundwater Investigation, Complete
5	[REDACTED]	[REDACTED]	December 11, 2017	Limited Phase II Environmental Site Assessment, Complete
6	[REDACTED]	[REDACTED]	December 11, 2017	Limited Phase II Environmental Site Assessment, Complete
7	[REDACTED]	[REDACTED]	December 11 2017	Limited Phase II Environmental Site Assessment, Complete
8	[REDACTED]	[REDACTED]	December 11, 2017	Limited Phase II Environmental Site Assessment, Complete
9	[REDACTED]	[REDACTED]	January 4, 2018	Limited Phase II Environmental Site Assessment, Complete
10	[REDACTED]	[REDACTED]	January 4, 2018	Limited Phase II Environmental Site Assessment, Complete
11	[REDACTED]	[REDACTED]	January 4, 2018	Limited Phase II Environmental Site Assessment, Complete
12	[REDACTED]	[REDACTED]	January 4, 2018	Limited Phase II Environmental Site Assessment, Complete
13	[REDACTED]	[REDACTED]	January 3, 2018	Limited Phase II Environmental Site Assessment, Complete

14	[REDACTED]	[REDACTED]	January 5, 2018	Limited Phase II Environmental Site Assessment, Complete
15	[REDACTED]	[REDACTED]	January 5, 2018	Limited Phase II Environmental Site Assessment, Complete
16	[REDACTED]	[REDACTED]	March 6, 2018	Limited Phase II Environmental Site Assessment, Complete
17	[REDACTED]	[REDACTED]	January 22, 2018	Limited Phase II Environmental Site Assessment, Complete
18	[REDACTED]	[REDACTED]	2005	Phase I Environmental Site Assessment, Complete
19	[REDACTED]	[REDACTED]	2005	Phase II Environmental Site Assessment, Complete
20	[REDACTED]	[REDACTED]	2006	Phase II Environmental Site Assessment, Complete
21	[REDACTED]	[REDACTED]	2016	Groundwater Investigation, Complete
22	[REDACTED]	[REDACTED]	2016	Soil Sampling Program Report, Complete
23	[REDACTED]	[REDACTED]	2015	Environmental Investigation Report, Complete
24	[REDACTED]	[REDACTED]	2006	Phase I Environmental Site Assessment, Complete
25	[REDACTED]	[REDACTED]	2006	Phase II Environmental Site Assessment, Complete
26	[REDACTED]	[REDACTED]	2013	Soil Sampling Program Report, Complete
27	[REDACTED]	[REDACTED]	2012	Phase I Environmental Site Assessment, Complete
28	[REDACTED]	[REDACTED]	2012	Soil Sampling Program Report, Complete
29	[REDACTED]	[REDACTED]	2015	Phase II Environmental Site Assessment, Complete

30	[REDACTED]	[REDACTED]	2014	Phase II Environmental Site Assessment, Complete
31	[REDACTED]	[REDACTED]	2006	Phase I Environmental Site Assessment, Complete
32	[REDACTED]	[REDACTED]	2011	Limited Phase II Environmental Site Assessment, Complete
33	[REDACTED]	[REDACTED]	2011	Phase I Environmental Site Assessment, Complete
34	[REDACTED]	[REDACTED]	2006	Phase II Environmental Site Assessment, Complete
35	[REDACTED]	[REDACTED]	2012	Phase II Environmental Site Assessment, Complete
36	[REDACTED]	[REDACTED]	2015	Groundwater Investigation, Complete
37	[REDACTED]	[REDACTED]	2005	Remediation Report, Complete
38	[REDACTED]	[REDACTED]	2008	Groundwater Investigation, Complete
39	[REDACTED]	[REDACTED]	2001	Remediation Report, Complete
40	[REDACTED]	[REDACTED]	2004	Groundwater Investigation, Complete
41	[REDACTED]	[REDACTED]	2003	Limited Phase II Environmental Site Assessment, Complete
42	[REDACTED]	[REDACTED]	2005	Monitoring Well Decommissioning Report, Complete
43	[REDACTED]	[REDACTED]	1999	Phase I Environmental Site Assessment, Complete
44	[REDACTED]	[REDACTED]	2004	Phase I Environmental Site Assessment, Complete
45	[REDACTED]	[REDACTED]	2002	Limited Phase II Environmental Site Assessment, Complete
46	[REDACTED]	[REDACTED]	2002	Phase II Environmental Site Assessment, Complete

47	[REDACTED]	[REDACTED]	2009	Supplemental Phase II Environmental Site Assessment, Complete
48	[REDACTED]	[REDACTED]	2006	Phase I Environmental Site Assessment, Complete
49	[REDACTED]	[REDACTED]	2017	Supplemental Phase III Environmental Site Assessment, Complete
50	[REDACTED]	[REDACTED]	2017	Phase II Environmental Site Assessment, Complete
51	[REDACTED]	[REDACTED]	2017	Groundwater Investigation, Complete
52	[REDACTED]	[REDACTED]	2015	Subsurface Investigation Report, Complete
53	[REDACTED]	[REDACTED]	2005	Supplemental Phase II Environmental Site Assessment, Complete
54	[REDACTED]	[REDACTED]	2005	Phase II Environmental Site Assessment, Complete

**APPENDIX C  
INTENTIONALLY DELETED**

**APPENDIX D  
CULTURAL HERITAGE REPORTS**

**[REDACTED]**

**APPENDIX E  
GEOTECHNICAL REPORTS**

	<b>Report Title</b>	<b>Author/Firm</b>	<b>Project Component</b>	<b>Report Date</b>	<b>Report Type &amp; Status</b>
1	[REDACTED]	[REDACTED]	Trillium Line Extension	May 2017	Geotechnical Data Report
2	[REDACTED]	[REDACTED]	Trillium Line Extension	June 2017	Geotechnical Data Report
3	[REDACTED]	[REDACTED]	Trillium Line Extension	January 2018	Geotechnical Data Report
4	[REDACTED]	[REDACTED]	Trillium Line Extension	February 2018	Geotechnical Data Report
5	[REDACTED]	[REDACTED]	Trillium Line Extension	January 2018	Geotechnical Data Report
6	[REDACTED]	[REDACTED]	Trillium Line Extension	March 2018	Geotechnical Data Report
7	[REDACTED]	[REDACTED]	Trillium Line Extension	July 2017	Historic Geotechnical Data Report
8	[REDACTED]	[REDACTED]	Trillium Line Extension	February 2018	Historic Geotechnical Data Report
9	[REDACTED]	[REDACTED]	Trillium Line Extension	July 2017	Hydrogeological Data Report
10	[REDACTED]	[REDACTED]	Trillium Line Extension	March 2018	Hydrogeological Data Report
11	[REDACTED]	[REDACTED]	Trillium Line Extension	March 2018	Hydrogeological Data Report
12	[REDACTED]	[REDACTED]	Trillium Line Extension	January 2018	Hydrogeological Data Report

	<b>Report Title</b>	<b>Author/Firm</b>	<b>Project Component</b>	<b>Report Date</b>	<b>Report Type &amp; Status</b>
13	[REDACTED]	[REDACTED]	Trillium Line Extension	February 2018	Hydrogeological Data Report

**APPENDIX F  
LISTED PROJECT CO PLAAs**

<b>Listed Project Co PLAA's</b>	<b>Timeline for Final Determination by the City</b>
Site Plan Control - Development Outside of the Public Transit System Right-of-Way	<b>[REDACTED]</b>
Building and Demolition Permits - Stations and MSF	<b>[REDACTED]</b>
Noise By-law Exemption * If approved by ward councillor	<b>[REDACTED]</b>
Approval discharge waste water - Under Sewer Use By-law	<b>[REDACTED]</b>
Road Cut Permit  Utility Circulation	<b>[REDACTED]</b>
Temporary Construction-Related Encroachment Permit ROW/Property	<b>[REDACTED]</b>
Street or Lane Closing/Opening	<b>[REDACTED]</b>
Zoning By-Law Amendment	<b>[REDACTED]</b>
Sign Permit	<b>[REDACTED]</b>
Permit Under Ontario Heritage Act	<b>[REDACTED]</b>
Emergency Services Approval - Fire and Life Safety	<b>[REDACTED]</b>

**APPENDIX G  
RVSC CASH FLOW**

**[REDACTED]**

## **SCHEDULE 2**

### **COMPLETION DOCUMENTS**

In this Schedule 2, “certified” shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation. Any capitalized term not defined in this Schedule 2 shall have the meaning given to such term in the Project Agreement.

#### **1. DOCUMENTS TO BE DELIVERED BY PROJECT CO**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than the City and the Independent Certifier and in form and substance satisfactory to the City, acting reasonably) is to be delivered by Project Co to the City on or prior to the Financial Close Target Date:

- 1.1 an original of the Project Agreement;
- 1.2 an original of the Custody Agreement;
- 1.3 an original of the Lenders’ Direct Agreement;
- 1.4 an original of the Construction Contractor’s Direct Agreement;
- 1.5 an original of the Maintenance and Rehabilitation Contractor’s Direct Agreement;
- 1.6 an original of the Independent Certifier Agreement;
- 1.7 an original of the Insurance Trust Agreement;
- 1.8 an original Notice of appointment of the Project Co Representative;
- 1.9 an original of the undertaking and acknowledgement in the form attached as Appendix A to this Schedule 2;
- 1.10 not used;
- 1.11 the Construction Contract;
- 1.12 the Maintenance and Rehabilitation Contract;
- 1.13 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by the Construction Contractor for the period prior to the Substantial Completion Date in accordance with the Project Agreement;
- 1.14 one (1) printed copy of the Financial Model (as revised pursuant to Section 2.3(d) of the Project Agreement, if applicable) and two (2) on universal serial bus (USB) flash drive;
- 1.15 a certificate of an officer of Project Co certifying:

- (a) a true copy of the Financial Model audit report dated [REDACTED] prepared by [REDACTED]; and
  - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.16 the PBS-1, in form and substance satisfactory to the City;
- 1.17 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.18 a certificate of an officer of each of the Construction Contractor and the Maintenance and Rehabilitation Contractor substantially in the form attached as Appendix B to this Schedule 2;
- 1.19 an original of the opinion from counsel to Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to the City and its counsel;
- 1.20 a final Lane Closure Target Letter;
- 1.21 not used;
- 1.22 [intentionally deleted];
- 1.23 written confirmation that the list of Key Individuals with respect to the Works submitted by Project Co as part of its proposal in the RFP process, is unchanged;
- 1.24 evidence that the COR-Qualified Construction Project Co Party has its COR Certification in good standing (or to the extent that the COR-Qualified Construction Project Co Party does not have its COR Certification by Financial Close, evidence that the COR-Qualified Construction Project Co Party has its current OHSAS 18001 Accreditation in good standing and has made an application to IHSA for its COR Certification);
- 1.25 the form of the following documents:
- (i) Maintenance and Rehabilitation Contractor:
    - A. the Maintenance LC (as defined in Schedule 4 – Funding Requirements); and
    - B. the Maintenance PCG (as defined in Schedule 4 – Funding Requirements);
- 1.26 a form of the Blocked Accounts Agreement to be dated on the Substantial Completion Date, in form and substance satisfactory to the parties thereto; and
- 1.27 the Equity Contribution Agreement.

## **2. DOCUMENTS TO BE DELIVERED BY THE CITY**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, where the City is a party to such document, executed by the City and, if applicable, any

City Party or Governmental Authority) is to be delivered by the City to Project Co on or prior to the Financial Close Target Date:

- 2.1 an original of the Project Agreement;
- 2.2 an original of the Custody Agreement;
- 2.3 an original of the Lenders' Direct Agreement;
- 2.4 an original of the Construction Contractor's Direct Agreement;
- 2.5 an original of the Maintenance and Rehabilitation Contractor's Direct Agreement;
- 2.6 an original of the Independent Certifier Agreement (executed by the City and the Independent Certifier);
- 2.7 an original of the Insurance Trust Agreement;
- 2.8 an original Notice of appointment of the City Representative;
- 2.9 such other documents as the Parties may agree, each acting reasonably;
- 2.10 a certificate of an officer of the City confirming that the representations and warranties of the City in Section 5.2(a) of the Project Agreement remain true and correct as of the date of Financial Close in the form attached as Appendix D to this Schedule 2; and
- 2.11 an original opinion from counsel to the City and such other City Parties as Project Co may reasonably require in respect of customary corporate and enforceability matters and otherwise acceptable to Project Co and its counsel, addressed to Project Co, the Lenders' Agent, the Construction Contractor and the Maintenance and Rehabilitation Contractor.

APPENDIX A

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

**TO:** City of Ottawa (the “City”)  
**RE:** Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [•] day of [•], 20• between the City and [•] (“**Project Co**”)

---

1. The undersigned acknowledges that:
  - (a) The Project will proceed as an alternative financing and procurement project and complies with the principles which guide the financing and procurement of public infrastructure projects in Ontario.
  - (b) Consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
2. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 20•.

[•]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

APPENDIX B

FORM OF PROJECT CO/PROJECT CO PARTY OFFICER'S CERTIFICATE

Certificate of an Officer of

[•]

(the "Corporation")

TO: CITY OF OTTAWA ("THE CITY")

---

AND TO: NORTON ROSE FULBRIGHT CANADA LLP

---

AND TO: [\_\_\_\_\_]

I, [•], being the [•] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Constatting Documents

- (a) The Corporation is a subsisting corporation duly incorporated under the laws of **[the Province of Ontario]**.
- (b) Attached hereto as **Schedule "A"** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the "**Articles**"). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
- (c) Attached hereto as **Schedule "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**") enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.
- (d) Attached hereto as **Schedule "C"** is a true and complete copy of a unanimous shareholders' agreement between the shareholders of the Corporation and the Corporation (the "**Unanimous Shareholders' Agreement**") executed on or before the date hereof. The Unanimous Shareholders' Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [•] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the

Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.

- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
  - (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
  - (h) Pursuant to the Unanimous Shareholders' Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the [*Business Corporations Act (Ontario) (the "Act")*], the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders' Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
  - (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders' Agreement or in any other agreement binding on the Corporation which:
    - (i) restrict or limit the powers of the Corporation to enter into:
      - (1) a certain project agreement with the City made as of [●], 20● (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**") pursuant to which the Corporation will design, build, finance and maintain a new light rail transit system;
      - (2) not used;
      - (3) direct agreements between the Contractors, the Corporation, [**the Guarantors**] and the City;
      - (4) [**Note to Proponents: List other documents delivered at Financial Close.**],
- (collectively, the "**Documents**"); or

- (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

## 2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule “D”** are true and complete copies of the resolutions of the **[directors/shareholders]** of the Corporation (the “**Resolutions**”), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
  - (i) the Articles, By-laws or the Unanimous Shareholders’ Agreement;
  - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or **[Ontario]** governmental body by which it is bound;
  - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
  - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there are no actions, suits, proceedings, or investigations pending or threatened in writing against the Corporation at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which the Corporation has received written notice and that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the Corporation or in any impairment of its ability to perform its obligations under the Documents, and the Corporation has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment.
- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or **[Ontario]** Governmental Authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

## 3. No Breach or Default

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under the

Articles, By-laws, Unanimous Shareholders' Agreement or under any other agreement binding on the Corporation.

**4. Specimen Signatures**

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>

**5. Capital**

Listed below are all of the issued and outstanding shares in the capital of the Corporation and the registered owner of such shares:

<u>ISSUED SHARES</u>	<u>REGISTERED OWNER</u>
----------------------	-------------------------

Attached hereto as **Schedule "E"** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation) securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20●.

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

APPENDIX C

FORM OF PROJECT CO/PROJECT CO PARTY OPINION

[INSERT DATE]

City of Ottawa  
[Insert Address]

- and -

Norton Rose Fulbright Canada LLP  
45 O'Connor Street, Suite 1500  
Ottawa, Ontario  
K1P 1A4

Dear Sirs/Mesdames:

**Re: Trillium Line Extension – Ottawa Stage 2 LRT Project**

---

We have acted as counsel to [●] (“**Project Co**”), [●] (the “**Construction Contractor**”) and [●] (the “**Maintenance and Rehabilitation Contractor**”) in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build, finance and maintain agreement for the extension of the Trillium Line light rail transit system in the City of Ottawa, Ontario. **[Note to Proponents: Additional parties to be added depending on consortium structure and/or the financing package.]**

This opinion is being delivered to the City of Ottawa (the “**City**”) and their counsel pursuant to Section 1.19 of Schedule 2 to the project agreement made as of [●] between the City and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as counsel to Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of [●]):

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):
  - (a) the Construction Contract;
  - (b) the Maintenance and Rehabilitation Contract;

- (c) the Lenders' Direct Agreement;
- (d) the Construction Contractor's Direct Agreement;
- (e) the Maintenance and Rehabilitation Contractor's Direct Agreement;
- (f) not used;
- (g) the Insurance Trust Agreement;
- (h) the Custody Agreement;
- (i) the Independent Certifier Agreement; and
- (j) the Performance Guarantees.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”. **[Note to Proponents: Additional documents to be added depending on consortium structure and/or the financing package.]**

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof.

We do not act as corporate counsel to **[Project Co, the Construction Contractor or the Maintenance and Rehabilitation Contractor]**, nor have we participated in the general maintenance of their corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of each of Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor dated as of the date hereof (the “**Officer's Certificates**”) as to certain factual matters.

### **Searches and Reliance**

We have conducted, or have caused to be conducted, the searches identified in Schedule “A” (the “**Searches**”) for filings or registrations made in those offices of public record listed in Schedule “A”. The Searches were conducted against the current name and all former names of Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule “A”.

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer's Certificates.

We have relied exclusively, and without any independent investigation or enquiry, on the Officer's Certificates and the certificates of public officials with respect to certain factual matters.

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on certificates of status issued by the **[Ministry of Government Services (Ontario)]** of even date, copies of which are attached as Schedule “B”.

In connection with the opinions set forth in paragraphs 5, 8, 11, 17 and 20 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●] (the “**CC Opinion**”), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

In connection with the opinions set forth in paragraphs 6, 9, 12, 18 and 21 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●] (the “**Maintenance Contractor Opinion**”), a copy of which has been delivered to you. To the extent that the Maintenance Contractor Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the Maintenance Contractor Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

### **Assumptions**

For the purposes of the opinions expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.
4. The completeness, truth and accuracy of all facts set forth in the Officer’s Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor) to Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor.

### **Opinions**

Based upon and subject to the foregoing, and to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

### **INCORPORATION AND EXISTENCE**

1. Project Co is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
2. The Construction Contractor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
3. The Maintenance and Rehabilitation Contractor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

### **CORPORATE POWER AND CAPACITY**

4. Project Co has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Project Agreement, and to enter into and perform its obligations under each of the Documents to which it is a party.
5. The Construction Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.
6. The Maintenance and Rehabilitation Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

### **CORPORATE AUTHORIZATION**

7. Project Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
8. The Construction Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
9. The Maintenance and Rehabilitation Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

### **EXECUTION AND DELIVERY**

10. Project Co has duly executed and delivered each of the Documents to which it is a party.

11. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.
12. The Maintenance and Rehabilitation Contractor has duly executed and delivered each of the Documents to which it is a party.

#### **ENFORCEABILITY**

13. Each of the Documents to which Project Co is a party constitutes a legal, valid and binding obligation of Project Co, enforceable against it in accordance with its terms.
14. Each of the Documents to which the Construction Contractor is a party constitutes a legal, valid and binding obligation of the Construction Contractor, enforceable against it in accordance with its terms.
15. Each of the Documents to which the Maintenance and Rehabilitation Contractor is a party constitutes a legal, valid and binding obligation of the Maintenance and Rehabilitation Contractor, enforceable against it in accordance with its terms.

#### **NO BREACH OR DEFAULT**

16. The execution and delivery by Project Co of the Documents to which it is a party does not, and the performance by Project Co of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which Project Co is subject.
17. The execution and delivery by the Construction Contractor of the Documents to which it is a party does not, and the performance by the Construction Contractor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Contractor is subject.
18. The execution and delivery by the Maintenance and Rehabilitation Contractor of the Documents to which it is a party does not, and the performance by the Maintenance and Rehabilitation Contractor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Maintenance and Rehabilitation Contractor is subject.

#### **REGULATORY APPROVALS**

19. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by Project Co of the Documents to which it is a party and the performance of its obligations thereunder.
20. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction

Contractor of the Documents to which it is a party and the performance of its obligations thereunder.

21. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Maintenance and Rehabilitation Contractor of the Documents to which it is a party and the performance of its obligations thereunder.

### **Qualifications**

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.
3. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
4. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
5. To the extent that a particular contractual provision is characterized by a court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
6. A court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a court as being solely the agent of Project Co notwithstanding any agreement to the contrary.
8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
9. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued.

In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.

10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a court, to the extent that they relate to the failure of such person to perform such duty or liability.
12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
14. Any award of costs is in the discretion of a court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on the City for which it would be contrary to public policy to require Project Co to indemnify the City or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

**[INSERT NAME OF LAW FIRM]**

APPENDIX D

FORM OF OFFICER'S CERTIFICATE

[●]  
(the "City")

TO: [\_\_\_\_\_]

AND TO: [\_\_\_\_\_]

AND TO: [\_\_\_\_\_]

AND TO: [\_\_\_\_\_]

RE: Project agreement (as amended, supplemented or modified from time to time, the "Project Agreement") dated the [●] day of [●], 201[●] between **THE CITY OF OTTAWA** ("City"), and [\_\_\_\_\_] ("**Project Co**")

I, [●], the [●] of the City and an authorized signatory of the City and being duly authorized by the City to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the City and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Attached hereto as [●] is a true and complete copy of (i) the resolutions of the directors of the City regarding the execution of public works projects assigned to the City and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the City relating to delegation of signing authority (collectively, the "[●]"), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the City pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
2. Attached hereto as **Schedule "B"** is a true and complete copy of the resolutions of the directors the Corporation approving the selection of Project Co as the designated proponent for the Project (the "**Project Resolutions**"). The Project Resolutions are the only resolutions of the City pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
3. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the City, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the City and are authorized to execute and deliver Contracts Documents (as such a term is defined in the Execution Resolutions referenced in Item 1(i) above) relating to the Project (as defined in the Project Agreement) on behalf of the City.

The signatures set forth opposite their respective names are the true signatures of those persons.

<b>Name</b>	<b>Position</b>	<b>Signature</b>
[●]	_____	_____
[●]	_____	_____
[●]	_____	_____
[●]	_____	_____

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201[●].

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

Title:

**SCHEDULE 3**  
**CUSTODY AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of March, 2019

**BETWEEN:**

**THE CITY OF OTTAWA**

(the “City”)

**AND:**

[REDACTED]

(the “Custodian”)

**AND:**

[REDACTED]

(the “Lenders’ Agent”)

**AND:**

**TRANSITNEXT GENERAL PARTNERSHIP [REDACTED]**

(“Project Co”)

**WHEREAS:**

- A. The City and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Custodian, and the Custodian wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Custodian wish to enter into this Custody Agreement in order to record the terms by which the Custodian shall perform such services, in accordance with Applicable Law.

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

## **1. DEFINITIONS**

In this Custody Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Custody Agreement) shall have meanings given to them in the Project Agreement. Any capitalized term not defined in this Schedule 3 shall have the meaning given to such term in the Project Agreement and the following terms shall have the following meanings:

- (a) “**City Signatories**” has the meaning given in Section 6(a)(i).
- (b) “**Material**” means hard and electronic copies of the Financial Model.
- (c) “**PA Parties**” means the City and Project Co, and “**PA Party**” means the City or Project Co, as the context requires.
- (d) “**Party**” means the City, the Custodian, Project Co or the Lenders’ Agent, and “**Parties**” means the City, the Custodian, Project Co and the Lenders’ Agent.
- (e) “**Project Agreement**” means the project agreement made on or about March 28, 2019 between the City and Project Co.
- (f) “**Project Co Signatory**” has the meaning given in Section 6(a)(ii).
- (g) “**Step-Out Date**” has the meaning given in Section 14(e).

## **2. Interpretation**

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

- (a) The headings in this Custody Agreement are for convenience of reference only, shall not constitute a part of this Custody Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Custody Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Custody 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, 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 Custody 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 Custody 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 Custody 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 Custody Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Custody 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 Custody 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 Custody 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 Custody Agreement they shall be construed and interpreted as synonymous and to read “shall”.

### **3. Project Co’s Duties and Warranties**

- (a) The City will, together with Project Co, verify the identity and consistency of one copy of the Material, which shall be delivered by Project Co to the Custodian on the date of this Custody Agreement.
- (b) Project Co shall at all times ensure that the Material as delivered to the Custodian is capable of being used to generate the latest version of the Financial Model issued to the City and shall deliver further copies of the Material to the Custodian as and when necessary.

- (c) Upon creation of any new versions of the Financial Model and within 30 days from receipt of a notice served upon it by the Custodian under the provisions of Section 4(a)(v), the replacement copy of the Material shall be verified by the PA Parties in accordance with Section 3(a) and delivered by Project Co to the Custodian.
- (d) Project Co warrants that:
  - (i) it owns the Intellectual Property Rights in the Material and has authority to enter into this Custody Agreement;
  - (ii) the use of the Materials by the City under the terms of this Custody Agreement shall not infringe any Intellectual Property Rights of any person; and
  - (iii) the Material delivered under Section 3(a) shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Material without the assistance of any other person.

#### **4. Custodian's Duties**

- (a) The Custodian shall:
  - (i) hold in safe custody all versions of the Financial Model delivered to it pursuant to the terms hereof, and the provisions of this Custody Agreement shall apply (with any necessary changes being made) to any revised Financial Model;
  - (ii) hold the Material in a safe and secure environment;
  - (iii) inform Project Co and the City of the receipt of any copy of the Material;
  - (iv) at all times retain a copy of the latest verified deposit of the Material; and
  - (v) promptly notify Project Co and the City if it becomes aware at any time during the term of this Custody Agreement that any copy of the Material held by it has been lost, damaged or destroyed.
- (b) The Custodian shall not be responsible for procuring the delivery of the Material in the event of failure by Project Co to do so.
- (c) In accordance with Section 10, the Custodian shall allow the PA Parties, the Lenders' Agent and the auditor retained by the Lenders' Agent to inspect and audit the Financial Model from time to time.

#### **5. Payment**

- (a) In consideration of the Custodian performing the services contemplated by this Custody Agreement, Project Co shall pay the Custodian's fees as agreed from time to time between the Custodian and Project Co.

**6. Release Events**

- (a) The Custodian shall hold the Material to the order of the PA Parties and shall honour the instructions and signatures of:
- (i) the designated signing officers of the City or such other persons nominated by them and notified to the Custodian and Project Co in writing (the “**City Signatories**”); and
  - (ii) the president & chief executive officer and designated signing officers of Project Co or such other person nominated by it and notified to the Custodian and the City in writing (the “**Project Co Signatory**”);

and shall, subject to Section 6(b), upon receiving signed joint instructions from the City Signatories and the Project Co Signatory, release one copy of the Material to the person either named in such instructions or previously identified in writing by the City Signatories and the Project Co Signatory.

- (b) The PA Parties each agree that they shall give joint instructions to the Custodian for the release of the Material, in accordance with Section 6(a), on each occasion that the Material is required to be released pursuant to the Project Agreement or that the Material must be released to allow the Material to be maintained and/or corrected.
- (c) The Custodian shall release the Material to a duly authorized representative of the City on any termination of the Project Agreement prior to the Expiry Date.

**7. Records**

- (a) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect any records kept by the Custodian in accordance with this Custody Agreement.

**8. Confidentiality**

- (a) The Material shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Material to the City, the City shall be permitted to use the Material only in accordance with the intellectual property and confidentiality obligations in the Project Agreement.
- (b) The Custodian agrees for itself, its directors, officers, employees, sub-contractors and agents, to maintain all information and/or documentation in whatever form coming into its possession or to its knowledge under or in connection with this Custody Agreement in strictest confidence and secrecy. The Custodian further agrees not to make use of such information and/or documentation other than for the purposes of this Custody Agreement and will not disclose or release it other than in accordance with the terms of this Custody Agreement.
- (c) In the event that the Material is released under Section 6, the City shall:
- (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of the City;

- (ii) not use the Material for any other purpose nor disclose it to any person, save such of its employees or contractors who need to know the same in order to understand, maintain and correct the Financial Model exclusively on behalf of the City;
- (iii) hold all media containing the Material in a safe and secure environment when not in use; and
- (iv) forthwith destroy the same should the City cease to be entitled to use the Financial Model.

**9. Intellectual Property Rights**

- (a) The release of the Material to the City and to the Custodian will not act as an assignment of any Intellectual Property Rights that Project Co possesses in the Material.

**10. Inspection**

- (a) Subject to the following provisions of this Section 10, the Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Financial Model.
- (b) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect and audit or to procure the inspection and audit of the Financial Model in accordance with this Section 10.
- (c) The Custodian shall, upon receiving duly signed instructions from both of the PA Parties (but only upon receiving such instructions), provide facilities for the City and/or Project Co and/or such person identified in the duly signed written instructions to inspect and audit the Financial Model.
- (d) The Custodian shall maintain a record of any inspection and audit made pursuant to Section 10(b), including details of the person who made the inspection and/or audit and the date of the same.

**11. Custodian's Liability**

- (a) The Custodian shall not be liable for any loss or damage caused to Project Co or the City either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors, and in such event, the Custodian's total liability in respect of all claims arising under or by virtue of this Custody Agreement shall not (except in the case of claims for personal injury or death) exceed the sum of \$[REDACTED] (index-linked).
- (b) The Custodian shall in no circumstances be liable to Project Co or the City for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- (c) Subject to complying with the provisions of Section 6, and save in the case of manifest error, the Custodian shall be protected in acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Custody Agreement, not only in assuming its due

execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.

- (d) The duties, responsibilities and obligations of the Custodian shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Custodian shall not be subject to, nor required to comply with, any other agreement between or among any or all of the other Parties or to which any Party is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance herewith). The Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder except ordinary corporate costs incurred in the performance of such duties.
- (e) If at any time the Custodian is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Material (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of property), the Custodian is authorized to comply therewith in any manner as it or its legal counsel deems appropriate, acting reasonably; provided that the Custodian, when so served, shall promptly notify Project Co and the City, in writing, of such process and the Custodian's intended action in order to provide Project Co and the City a reasonable opportunity to intervene or challenge such process in a court or tribunal of competent jurisdiction.
- (f) The Custodian may consult with legal counsel at the expense of Project Co and the City as to any matter relating to this Custody Agreement, and the Custodian shall not incur any liability in acting in good faith in accordance with any advice from such counsel. All reasonable fees and disbursements incurred by the Custodian shall be added to the fees otherwise payable hereunder.
- (g) The Custodian shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Custodian (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (h) The Custodian shall not be responsible in any respect for the form or content of the Material delivered to it hereunder.
- (i) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Custodian hereunder, the Custodian shall notify Project Co and the City in writing of such ambiguity or uncertainty and request instructions to eliminate such ambiguity or uncertainty. The Custodian may, acting reasonably, refrain from taking any action other than to retain possession of the Material, unless the Custodian receives written instructions, signed by Project Co and the City, which eliminates such ambiguity or uncertainty.
- (j) In the event of any dispute between or conflicting claims by or among the PA Parties and/or any other person or entity with respect to the Material, the Custodian shall be entitled, acting reasonably, to refuse to comply with any and all claims, demands or instructions with respect to the Material so long as such dispute or conflict shall continue, and the Custodian shall promptly

notify Project Co and the City of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or the City for failure or refusal to comply with such conflicting claims, demands or instructions. The Custodian shall be entitled to refuse to act until, acting reasonably, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in writing satisfactory to the Custodian or (ii) the Custodian shall have received security or an indemnity satisfactory to it acting reasonably sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Custodian may, in addition, elect, acting reasonably, to commence an interpleader action or seek other judicial relief or orders as it may deem, acting reasonably, necessary, including, without limiting the generality of the foregoing, depositing all or any part of the Material into court. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, Project Co and the City.

- (k) Each of Project Co and the City shall provide to the Custodian an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Custodian hereunder. The Custodian shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Custodian shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this Section 11.
- (l) The Custodian shall be entitled to rely, and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission.
- (m) This Section 11 shall survive the termination of this Custody Agreement.

## **12. Indemnity**

- (a) Save for any claim falling within the provisions of Section 11(a), Project Co and the City, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors and employees, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) arising from or in connection with or related to this Custody Agreement or acting as Custodian hereunder (including, but not limited to, losses incurred by the Custodian in connection with its successful defense of any claim of negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Custodian to be indemnified for losses caused by its negligence or willful misconduct.
- (b) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement, shall be conducted in accordance with the conduct of claims procedure described in Appendix A – Conduct of Claims to this Custody Agreement.

## **13. Termination**

- (a) The Custodian may terminate this Custody Agreement for failure by Project Co to pay any outstanding fee provided for herein within 30 days of receipt of written notice in respect thereof.

- (b) The Custodian may terminate this Custody Agreement by giving 120 days' prior written notice to Project Co and the City. In that event, Project Co and the City shall appoint a mutually acceptable new custodian on terms similar to those contained in this Custody Agreement.
- (c) If the Custodian is not notified of the new custodian within the notice period given in Section 13(b), the Custodian will destroy the Material.
- (d) The City may terminate this Custody Agreement by giving 30 days' prior written notice to the Custodian and Project Co.
- (e) Project Co may, with the prior written consent of the City, terminate this Custody Agreement by giving 30 days' prior written notice to the Custodian and the City.
- (f) This Custody Agreement shall terminate upon release of the Material to the City in accordance with Section 6(c).
- (g) Upon termination under the provisions of Sections 13(d) or 13(e), the Custodian will deliver the Material to Project Co. If the Custodian is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian, the Custodian will destroy the Material.
- (h) Upon termination under the provisions of Section 13(a), the Material will be available for collection by Project Co from the Custodian for 60 days from the date of termination. After such 60-day period, the Custodian will destroy the Material.
- (i) The Custodian may forthwith terminate this Custody Agreement and destroy the Material if it is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian having used all reasonable endeavours to do so.
- (j) The provisions of Sections 8, 11 and 12 shall continue in full force and effect after termination of this Custody Agreement.
- (k) The Agreement shall terminate on the Expiry Date, at which time Project Co will write to the Custodian requesting the release of the Materials to it. The Custodian agrees that it will notify the City of Project Co's request and, failing receipt of any notice of objection from the City within 30 days of the receipt of the notice by the City, it shall release the Materials to Project Co.
- (l) On termination of this Custody Agreement, Project Co shall remain liable to the Custodian for payment in full of any fee which has become due but which has not been paid as at the date of termination.

#### **14. Step-In Rights**

- (a) The Custodian shall, from time to time:
  - (i) permit the City to perform or discharge any obligation of Project Co under this Custody Agreement, where Project Co is in breach of the same;
  - (ii) permit Project Co to perform or discharge any obligation of the City under this Custody Agreement, where the City is in breach of the same; and

- (iii) following notification by the Lenders' Agent (who at the same time shall provide a copy of any such notification to the City), permit the Lenders' Agent or another person specified in such notice with effect from the date specified in the same to perform or discharge all the obligations of Project Co under this Custody Agreement, provided that the Lenders' Agent shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to Project Co under this Custody Agreement and the Custodian undertakes to perform such obligations in favour of the Lenders' Agent.
- (b) Project Co consents to the performance or discharge of its obligations by the City pursuant to Section 14(a)(i).
- (c) The City consents to the performance or discharge of its obligations by Project Co pursuant to Section 14(a)(ii).
- (d) The PA Parties consent to the performance or discharge of Project Co's obligations by the Lenders' Agent pursuant to Section 14(a)(iii).
- (e) The City or the Lenders' Agent shall be entitled to terminate the Lenders' Agent's obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (the City or the Lenders' Agent at the same time shall provide a copy of any such notification to the other party) of at least 15 Business Days. On and from the date of expiry of such notice (the "**Step-Out Date**"), the Lenders' Agent shall be automatically released from all obligations pursuant to this Custody Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.
- (f) The occurrence of the Step-Out Date shall not affect the continuation of Project Co's obligations towards the Custodian under this Custody Agreement.
- (g) The Lenders' Agent is a Party to this Custody Agreement solely for the purposes of taking the benefit of its rights under Section 4(c) and this Section 14 and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of Section 4(c) and this Section 14.

## **15. Assignment**

- (a) This Custody Agreement shall be binding on, and enure to the benefit of, the Custodian, Project Co and the City and their respective successors and permitted transferees and assigns.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 57.1 of the Project Agreement.
- (c) The City may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom the City assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 57.2 of the Project Agreement.
- (d) The Custodian shall not, without the prior written consent of the PA Parties assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person.



- (d) Subject to Sections 16(e), 16(f) and 16(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 16.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

**17. [Intentionally deleted]**

**18. Amendments**

- (a) This Custody 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 Custody Agreement.

**19. Waiver**

- (a) No waiver made or given by a Party under or in connection with this Custody 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.

**20. Relationship Between the Parties**

- (a) The Parties are independent contractors. This Custody Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, trustee and beneficiary, employer and employee, master and servant, or principal and Lenders' Agent.

**21. Entire Agreement**

- (a) Except where provided otherwise in this Custody Agreement, this Custody Agreement and the Project Agreement constitute the entire agreement between the Parties in connection with the subject matter of this Custody Agreement and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Custody Agreement.

**22. Severability**

- (a) Each provision of this Custody Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Custody 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 Custody Agreement. If any such provision of this Custody 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 Custody Agreement as near as possible to its original intent and effect.

**23. Enurement**

- (a) This Custody Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

**24. Governing Law and Jurisdiction**

- (a) This Custody 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 Custody Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**25. Further Assurance**

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Custody Agreement.

**26. Language of Agreement**

- (a) Each Party acknowledges having requested and being satisfied that this Custody Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ces documents soient rédigés en anglais et s'en declare satisfaite.

**27. Proof of Authority**

- (a) The City reserves the right to require any person executing this Custody Agreement on behalf of Project Co or the Lenders' Agent to provide proof, in a form acceptable to the City, that such person has the requisite authority to execute this Custody Agreement on behalf of and to bind Project Co or the Lenders' Agent, respectively.

**28. Counterparts**

- (a) This Custody 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 Custody Agreement which was so faxed.

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

**CITY OF OTTAWA**

**Per:** \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

**[REDACTED]**

**Per:** \_\_\_\_\_  
Name:  
Title:

**Per:** \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**[REDACTED]**

**Per:** \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

I/We have authority to bind the corporation.

**TRANSITNEXT GENERAL PARTNERSHIP**

**[REDACTED]**

**Per:** \_\_\_\_\_

Name:

Title:

**Per:** \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

**[REDACTED]**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

## APPENDIX A

### CONDUCT OF CLAIMS

This Appendix A shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the City and Project Co are referred to, collectively, as the “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 12 of the Custody Agreement, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix A, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. In such case, the City may, but shall not be obligated to, assume (on prior written notice to Project Co) control of any such defence for and on behalf of itself and Project Co, and Project Co hereby consents to such assumption. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim at its own cost and expense.
- (3) With respect to any claim conducted by the Indemnifier:
  - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which Section (3) of this Appendix A relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Custody Agreement if:
  - (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section (2) of this Appendix A; or

- (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) of this Appendix A or the Indemnifier notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim.
- (5) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) of this Appendix A applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5) of this Appendix A, then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”), the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
  - (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
  - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.
- (7) Any person taking any of the steps contemplated by this Appendix A shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Custody Agreement.

## SCHEDULE 4

### FUNDING REQUIREMENTS

#### 1. Definitions

Any capitalized term not defined in this Schedule 4 shall have the meaning given to such term in the Project Agreement. In this Schedule 4, unless the context otherwise requires:

- (a) “**Actual Monthly Project Co Costs**” means all costs incurred by Project Co in a given Contract Month including, without being limited to, maintenance expenses, lifecycle expenses, payments to the Maintenance and Rehabilitation Contractor, insurance premiums, administrative costs (including Special Purpose Vehicle expenses). For clarity, Distributions to Equity Capital shall not be included as part of the Actual Monthly Project Co Costs.
- (b) “**Actual Monthly Project Co Payments**” means the Monthly Service Payment received by Project Co from the City in a given Contract Month in accordance with Schedule 19.
- (c) “**Capital Coverage Ratio**” has the meaning set out in Section 2.3.
- (d) “**Capital Coverage Ratio Calculation Period**” on a given calculation date shall be the period which ends on the last day of the Contract Month that is 2 Contract Months prior to such date, and commences on the later of (i) the start of the Contract Month that is 11 (eleven) Contract Months prior to such period end date and (ii) the Payment Commencement Date. For clarity, the Capital Coverage Ratio Calculation Period shall capture a twelve (12) month period other than in respect of reporting for the first 13 Contract Months.
- (e) “**Capital Coverage Ratio Reporting Period**” means the period commencing on the first day of Contract Month three (3) and ending on the Expiry Date.
- (f) “**Maintenance Fee Reference Amount**” means with respect to any Contract Year, the total Annual Service Payment (excluding any Lifecycle Payments payable in that year) PLUS the average annual Lifecycle Payments over the Maintenance Period, in each case indexed in accordance with the provisions of the Project Agreement, all amounts being exclusive of HST.
- (g) “**Threshold Capital Coverage Ratio**” has the meaning set out in Section 2.1.

#### 2. Financing of the Project

- 2.1 At Financial Close, the Financial Model shall show Project Co maintaining a minimum annual Capital Coverage Ratio equal to [REDACTED] or, for Service Levels other than Service Level 1, such lower value as indicated in the Financial Model (“**Threshold Capital Coverage Ratio**”). Project Co’s Performance Monitoring Report during the Capital Coverage Ratio Reporting Period shall include confirmation of Project Co’s actual Capital Coverage Ratio.

For clarity, in no cases shall the Threshold Capital Coverage Ratio be less than [REDACTED].

2.2 For each month during the Capital Coverage Ratio Reporting Period, confirmation of Project Co's actual Capital Coverage Ratio shall be based on data from monthly unaudited financial statements. Where audited financial statements are available, Project Co shall use such statements for purposes of calculating the Capital Coverage Ratio. The City reserves the right to request from Project Co evidence validating the calculation of the Capital Coverage Ratio for any given Contract Month within the Capital Coverage Ratio Reporting Period.

2.3 **“Capital Coverage Ratio”** shall be calculated as the quotient of (i) the aggregate Actual Monthly Project Co Payments for the relevant Capital Coverage Ratio Calculation Period, and (ii) the aggregate Actual Monthly Project Co Costs for the relevant Capital Ratio Calculation Period.

### **3. Positive Covenants**

3.1 Project Co shall provide to the City:

(a) for Project Co:

(i) within forty-five (45) days of Project Co's first three (3) fiscal quarter ends, quarterly unaudited management financial statements prepared in accordance with Canadian GAAP or International Financial Reporting Standards; and

(b) for Maintenance and Rehabilitation Guarantor:

(i) within sixty (60) days of the second and fourth quarter ends, semi-annual unaudited financial statements prepared in accordance with Canadian GAAP or International Financial Reporting Standards; and

(ii) within one hundred and eighty (180) days of Maintenance and Rehabilitation Guarantor's fiscal year-end, annual audited financial statements prepared in accordance with Canadian GAAP or International Financial Reporting Standards;

(c) from the Project Co Parties and the Maintenance and Rehabilitation Guarantor, as applicable, the security set out in Section 4;

(d) For each of the accounts specified in Sections 3.2, 3.3 and 3.4:

(i) within thirty days following each calendar month following Substantial Completion, an account statement showing all transactions, including, without being limited to, any deposits, draws, interest earned and balance changes, issued by the financial institution holding such account.

3.2 Project Co shall establish and maintain following Substantial Completion, at its sole expense, the Proceeds Account which shall be opened in the name of Project Co and the balance of which, including all income and returns thereon, shall be for the benefit of Project Co which, save as provided below, shall be subject to Project Co control at all times, but shall be subject to the relevant Blocked Accounts Agreement in favour of the City. Project Co shall deposit, or cause to be deposited, to the Proceeds Account (a) any interest income from investments; (b) all revenues; (c) all payments by the City under the Project Agreement; (d) all other monies paid to or received by Project Co (including liquidated damages and insurance proceeds) and (e) the Equity

Contributions. On the occurrence and during the continuation of a Project Co Event of Default, the City will control the Proceeds Account. For greater certainty, so long as a Project Co Event of Default is not continuing, Project Co shall be entitled to deal with amounts in the Proceeds Account in its sole discretion.

- 3.3 Project Co shall establish and maintain following Substantial Completion, at its sole expense, the Distribution Account which shall be opened in the name of Project Co and the balance of which, including all income and returns, shall be for the benefit of Project Co and which shall not be subject to the control of the City under and in accordance with the relevant Blocked Accounts Agreement and shall not be subject to the security in favour of the City. Distributions on Equity Capital shall be made to the Distribution Account.
- 3.4 Project Co shall establish and maintain, at its sole expense, the Equity Lock-Up Account which shall be opened in the name of Project Co and the balance of which, including all income and returns, shall be for the benefit of Project Co and which shall be subject to the relevant Blocked Accounts Agreement and subject to the security in favour of the City. Amounts which would otherwise be capable of being transferred from the Proceeds Account to the Distribution Account shall be deposited into the Equity Lock-Up Account where any failure to meet the Restricted Payment Conditions has occurred and is continuing. So long as the Restricted Payment Conditions are not met, funds on deposit in the Equity Lock-Up Account shall be available, at the discretion of Project Co, to cover any costs or other amounts payable by Project Co (other than for certainty, Distributions) to provide or otherwise remediate Maintenance and Rehabilitation Services. Once the Restricted Payment Conditions are satisfied, amounts in the Equity Lock-Up Account shall be available for distribution to the Distribution Account.
- 3.5 Project Co shall not make any payment or distribution from the Proceeds Account to the Distribution Account unless at such time each of the following conditions (the “**Restricted Payment Conditions**”) are satisfied:
- (a) Substantial Completion has been achieved; and
  - (b) the Capital Coverage Ratio is greater than or equal to [REDACTED].

#### 4. Security

- 4.1 Project Co shall cause the Maintenance and Rehabilitation Contractor to deliver the following documents and agreements no later than Substantial Completion:
- (a) a letter of credit as security for Maintenance and Rehabilitation Services, in form and content satisfactory to the Parties, each acting reasonably (each a “**Maintenance LC**”);
  - (b) a parent company guarantee, in form and substance satisfactory to the Parties, each acting reasonably and executed by Maintenance and Rehabilitation Guarantor with respect to the Maintenance and Rehabilitation Services (the “**Maintenance PCG**”);
  - (c) the Blocked Accounts Agreement; and
  - (d) such other documents and agreements as the City may require, acting reasonably, based on the financial structure proposed in the Financial Model.

The letter of credit will be delivered to, and held by, the Insurance Trustee.

- 4.2 With respect to any Contract Year, the Maintenance LC amount shall be established at the start of the Contract Year (no later than 20 days from the start of such Contract Year) and will be equal to **[REDACTED]**% of the Maintenance Fee Reference Amount.
- 4.3 With respect to any year, the Maintenance PCG amount shall be equal to **[REDACTED]**% of the Maintenance Fee Reference Amount.
- 4.4 Security requirements identified in Section 4.1(a) and (b) may be submitted by the Maintenance and Rehabilitation Contractor identifying both Project Co and the City as joint beneficiaries of such security. Any Maintenance LC and the Maintenance PCG shall be released on or after the Expiry Date once Project Co's responsibilities with respect to the Maintenance and Rehabilitation Services have been completed.

**SCHEDULE 5-1**

**CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of March, 2019

**BETWEEN:**

**CITY OF OTTAWA**

(the “City”)

- AND -

**TRANSIT NEXT GENERAL PARTNERSHIP, [REDACTED]**

(“Project Co”)

- AND -

**[REDACTED]**

(the “Construction Contractor”)

- AND -

**[REDACTED]**

(the “Construction Guarantor”)

**WHEREAS:**

- A. The City and Project Co have entered into the Project Agreement dated March 28, 2019, which requires Project Co to enter into, and to cause the Construction Contractor and the Construction Guarantor to enter into, this Construction Contractor’s Direct Agreement with the City.
- B. Project Co and the Construction Contractor have entered into the Construction Contract, which requires the Construction Contractor and the Construction Guarantor to enter into this Construction Contractor’s Direct Agreement with the City.
- C. In consideration of the City entering into the Project Agreement with Project Co, the Contractor agrees to enter into this agreement with the City

**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**

In this Construction Contractor’s Direct Agreement, unless the context otherwise requires:

- (a) “**Applicable Law**” has the meaning given in the Project Agreement.

- (b) “**Business Day**” has the meaning given in the Project Agreement.
- (c) “**Construction Contract**” has the meaning given in the Project Agreement.
- (d) “**Construction Contractor’s Direct Agreement**” means this Construction Contractor’s Direct Agreement.
- (e) “**Default Notice**” has the meaning given in Section 5(a).
- (f) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (g) “**Lenders**” has the meaning given in the Project Agreement.
- (h) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.
- (i) “**Party**” means the City, the Construction Contractor, the Construction Guarantor or Project Co, and “**Parties**” means the City, the Construction Contractor, the Construction Guarantor and Project Co.
- (j) “**Project**” has the meaning given in the Project Agreement.
- (k) “**Project Agreement**” means the project agreement made on or about March 28, 2019 between the City and Project Co.
- (l) “**Step-In Notice**” has the meaning given in Section 6(a).
- (m) “**Substitute**” has the meaning given in Section 6(a).
- (n) “**Variation**” has the meaning given in the Project Agreement.

## 2. INTERPRETATION

This Construction Contractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Construction Contractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction Contractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor’s 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 Construction Contractor’s 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, 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 Construction Contractor’s 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 Construction Contractor’s 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 Construction Contractor’s 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 Construction Contractor’s 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 Construction Contractor’s 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 Construction Contractor’s 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 Construction Contractor’s 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 Construction Contractor’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

**3. CONFLICT IN DOCUMENTS**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement, the Project Agreement and the Construction Contract, this Construction Contractor's Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

**4. AGREEMENTS**

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Construction Contract without the prior written consent of the City, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor's Direct Agreement and does not have the effect of increasing any liability of the City, whether actual or potential. Project Co and the Construction Contractor shall provide to the City a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Construction Contract that may give the Construction Contractor a right to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder, then the Construction Contractor shall concurrently provide the City with a copy of such notice and set out in reasonable detail the default(s).

**5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE**

The Construction Contractor shall not exercise any right it may have to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder unless:

- (a) the Construction Contractor first delivers a written notice (a "**Default Notice**") to the City setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder; and
- (b) within a period of 5 Business Days of the City receiving the Default Notice:
  - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co

or to discontinue the Construction Contractor's performance thereunder have not been remedied; and

- (ii) the Construction Contractor has not received a Step-In Notice from the City,

provided that if, within such period of 5 Business Days, the City agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

## 6. STEP-IN RIGHTS

- (a) The City may at any time:

- (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of the City receiving a Default Notice; or
- (ii) if the City has not received a Default Notice and if the City's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Construction Contract either with the City or a third party designated by the City in the Step-In Notice (the "**Substitute**"), provided that the City can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Construction Contract.

- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:

- (i) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and the City or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
- (ii) the existing and future rights of Project Co against the Construction Contractor under the Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and the City or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to the City if the City pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;
- (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction

Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Construction Contract, except for the “Additional Letter of Credit” (as defined in the Construction Contract) provided in accordance with the Construction Contract, shall be assigned, novated or granted, as required by the City or the Substitute, as applicable, each acting reasonably, to the City or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and

- (iv) at the City’s request, the Construction Contractor shall enter into, and shall cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and the City shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including an agreement between the City or the Substitute, as applicable, and the Construction Contractor, acceptable to the City and the Construction Contractor, each acting reasonably, on substantially the same terms as the Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with the City and the Substitute in order to achieve a smooth transfer of the Construction Contract to the City or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If the City gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor’s performance thereunder in accordance with the terms of this Construction Contractor’s Direct Agreement, the Construction Contractor agrees that the Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and the City shall pay the Construction Contractor’s reasonable costs for re-commencing the obligations it has under the Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-

commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

**7. CONSTRUCTION CONTRACTOR LIABILITY**

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
  - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for the City, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by the City of any other person to review the progress of or otherwise report to the City in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to the City,

provided always that nothing in this Section 7 shall modify or affect any rights which the Construction Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event the City delivers a Step-In Notice, the Construction Contractor shall have no greater liability to the City or any Substitute than it would have had to Project Co under the Construction Contract, and the Construction Contractor shall be entitled in any proceedings by the City or any Substitute to rely on any liability limitations in the Construction Contract.

**8. PROJECT CO AS PARTY**

Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Construction Contract by complying with its obligations hereunder.

**9. CONSTRUCTION GUARANTOR AS PARTY**

The Construction Guarantor agrees with the City that the Construction Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of the City, and agrees that the Construction Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Construction Guarantor enters into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

**10. ASSIGNMENT**

- (a) Project Co shall not, without the prior written consent of the City, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.

- (b) The City may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor’s Direct Agreement to any person to whom the City may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of the City and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor’s Direct Agreement except as may be permitted under the Construction Contract.

**11. NOTICES**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Construction Contractor’s Direct Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Construction Contractor’s Direct Agreement) and served by sending the same by registered mail, facsimile or by hand (in each case, with a copy by electronic transmission), 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 Project Co: TransitNEXT General Partnership  
[REDACTED]  
Email: [REDACTED]  
Attn: [REDACTED]

If to the Construction Contractor: [REDACTED]  
Fax: [REDACTED]  
Email: [REDACTED]  
Attn: [REDACTED]

If to the Construction Guarantor: [REDACTED]

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

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party’s failure to comply with this Section 11(b).

- (c) Any Party to this Construction Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(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.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **12. AMENDMENTS**

This Construction Contractor's 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 Construction Contractor's Direct Agreement.

## **13. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Construction Contractor's 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.

**14. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Construction Contractor's 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 Construction Contractor's Direct Agreement, of principal and agent.

**15. ENTIRE AGREEMENT**

Except where provided otherwise in this Construction Contractor's Direct Agreement, this Construction Contractor's 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 Construction Contractor's Direct Agreement.

**16. SEVERABILITY**

Each provision of this Construction Contractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Construction Contractor's 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 Construction Contractor's Direct Agreement. If any such provision of this Construction Contractor's 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 Construction Contractor's Direct Agreement as near as possible to its original intent and effect.

**17. ENUREMENT**

This Construction Contractor's 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.

**18. GOVERNING LAW AND JURISDICTION**

- (a) This Construction Contractor's 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 Construction Contractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**19. [INTENTIONALLY DELETED]**

**20. FURTHER ASSURANCE**

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

**21. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Construction Contractor's 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.

**22. COUNTERPARTS**

This Construction Contractor's 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 Construction Contractor's Direct Agreement which was so faxed.

**IN WITNESS WHEREOF** the Parties have executed this Construction Contractor's Direct Agreement as of the date first above written.

**THE CITY OF OTTAWA**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

**TRANSITNEXT GENERAL PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**[REDACTED]**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**[REDACTED]**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

**SCHEDULE 5-2**

**MAINTENANCE AND REHABILITATION CONTRACTOR'S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of March, 2019

**BETWEEN:**

**THE CITY OF OTTAWA**

(the “City”)

- AND -

**TRANSIT NEXT GENERAL PARTNERSHIP, [REDACTED]**

(“Project Co”)

- AND -

**[REDACTED]**

(the “Maintenance and Rehabilitation Contractor”)

- AND -

**[REDACTED]**

(the “Maintenance and Rehabilitation Guarantor”)

**WHEREAS:**

- A. The City and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Maintenance and Rehabilitation Contractor and the Maintenance and Rehabilitation Guarantor to enter into, this Maintenance and Rehabilitation Contractor's Direct Agreement with the City.
- B. Project Co and the Maintenance and Rehabilitation Contractor have entered into the Maintenance and Rehabilitation Contract, which requires the Maintenance and Rehabilitation Contractor and the Maintenance and Rehabilitation Guarantor to enter into this Maintenance and Rehabilitation Contractor's Direct Agreement with the City.

**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**

In this Maintenance and Rehabilitation Contractor's Direct Agreement, unless the context otherwise requires:

- (a) “**Applicable Law**” has the meaning given in the Project Agreement.

- (b) “**Business Day**” has the meaning given in the Project Agreement.
- (c) “**Default Notice**” has the meaning given in Section 5(a).
- (d) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (e) “**Maintenance and Rehabilitation Contract**” has the meaning given in the Project Agreement.
- (f) “**Maintenance and Rehabilitation Contractor’s Direct Agreement**” means this Maintenance and Rehabilitation Contractor’s Direct Agreement.
- (g) “**Party**” means the City, the Maintenance and Rehabilitation Contractor, the Maintenance and Rehabilitation Guarantor or Project Co, and “**Parties**” means the City, the Maintenance and Rehabilitation Contractor, the Maintenance and Rehabilitation Guarantor and Project Co.
- (h) “**Project**” has the meaning given in the Project Agreement.
- (i) “**Project Agreement**” means the project agreement made on or about March 28, 2019 between the City and Project Co.
- (j) “**Step-In Notice**” has the meaning given in Section 6(a).
- (k) “**Substitute**” has the meaning given in Section 6(a).
- (l) “**Variation**” has the meaning given in the Project Agreement.

## 2. INTERPRETATION

This Maintenance and Rehabilitation Contractor’s Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Maintenance and Rehabilitation Contractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Maintenance and Rehabilitation Contractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Maintenance and Rehabilitation Contractor’s 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 Maintenance and Rehabilitation Contractor’s 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, 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 Maintenance and Rehabilitation Contractor’s 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 Maintenance and Rehabilitation Contractor’s 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 Maintenance and Rehabilitation Contractor’s 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 Maintenance and Rehabilitation Contractor’s 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 Maintenance and Rehabilitation Contractor’s 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 Maintenance and Rehabilitation Contractor’s 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 Maintenance and Rehabilitation Contractor’s 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 Maintenance and Rehabilitation Contractor’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

**3. CONFLICT IN DOCUMENTS**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Maintenance and Rehabilitation Contractor’s Direct Agreement, the Project Agreement and the Maintenance and Rehabilitation Contract, this Maintenance and Rehabilitation Contractor’s Direct Agreement shall prevail.

**4. AGREEMENTS**

- (a) Project Co and the Maintenance and Rehabilitation Contractor shall not amend, modify, or depart from the terms of the Maintenance and Rehabilitation Contract without the prior written consent of the City, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Maintenance and Rehabilitation Contractor’s Direct Agreement and does not have the effect of increasing any liability of the City, whether actual or potential. Project Co and the Maintenance and Rehabilitation Contractor shall provide a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Maintenance and Rehabilitation Contract.
- (c) If the Maintenance and Rehabilitation Contractor gives Project Co any notice of any default(s) under the Maintenance and Rehabilitation Contract that may give the Maintenance and Rehabilitation Contractor a right to terminate the Maintenance and Rehabilitation Contract or to treat it as having been repudiated by Project Co or to discontinue the Maintenance and Rehabilitation Contractor’s performance thereunder, then the Maintenance and Rehabilitation Contractor shall concurrently provide the City with a copy of such notice and set out in reasonable detail the default(s).

**5. NO TERMINATION BY MAINTENANCE AND REHABILITATION CONTRACTOR WITHOUT DEFAULT NOTICE**

The Maintenance and Rehabilitation Contractor shall not exercise any right it may have to terminate the Maintenance and Rehabilitation Contract or to treat it as having been repudiated by Project Co or to discontinue the Maintenance and Rehabilitation Contractor’s performance thereunder unless:

- (a) the Maintenance and Rehabilitation Contractor first delivers a written notice (a “**Default Notice**”) to the City setting out in reasonable detail the default(s) on which the Maintenance and Rehabilitation Contractor intends to rely in terminating the Maintenance and Rehabilitation Contract or to treat it as having been repudiated by Project Co or to discontinue the Maintenance and Rehabilitation Contractor’s performance thereunder; and

- (b) within the period ending 30 days after the Maintenance and Rehabilitation Contractor notifies the City of the expiry of any relevant period for the exercise of step-in or similar rights, then 30 days after the later of the City receiving Default Notice or the expiry of the applicable cure period under the Maintenance and Rehabilitation Contract:
  - (i) the default(s) on which the Maintenance and Rehabilitation Contractor intends to rely in terminating the Maintenance and Rehabilitation Contract or to treat it as having been repudiated by Project Co or to discontinue the Maintenance and Rehabilitation Contractor's performance thereunder have not been remedied; and
  - (ii) the Maintenance and Rehabilitation Contractor has not received a Step-In Notice from the City,

provided that, until such time as the City gives the Maintenance and Rehabilitation Contractor a notice that the City will not be exercising its step-in rights, the City shall pay the Maintenance and Rehabilitation Contractor's reasonable costs of continued performance.

## 6. STEP-IN RIGHTS

- (a) The City may at any time:
  - (i) within the period referred to in Section 5(b); or
  - (ii) if the City has not received a Default Notice and if the City's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Maintenance and Rehabilitation Contract either with the City or a third party designated by the City in the Step-In Notice (the "**Substitute**"), provided that the City can demonstrate to the Maintenance and Rehabilitation Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Maintenance and Rehabilitation Contract.

- (b) Subject to Section 6(d), upon receipt by the Maintenance and Rehabilitation Contractor of a Step-In Notice:
  - (i) Project Co and the Maintenance and Rehabilitation Contractor will be deemed to be released from their existing and future obligations under the Maintenance and Rehabilitation Contract to each other (except with respect to any and all indemnities from Project Co or the Maintenance and Rehabilitation Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and the City or the Substitute, as applicable, and the Maintenance and Rehabilitation Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
  - (ii) the existing and future rights of Project Co against the Maintenance and Rehabilitation Contractor under the Maintenance and Rehabilitation Contract and vice versa will be deemed to be cancelled (except with respect to any and all

indemnities from Project Co or the Maintenance and Rehabilitation Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and the City or the Substitute, as applicable, and the Maintenance and Rehabilitation Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Maintenance and Rehabilitation Contractor to the City if the City pays for the Maintenance and Rehabilitation Contractor's reasonable costs of continued performance pursuant to Section 5;

- (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Maintenance and Rehabilitation Contractor to be performed, observed or carried out by the Maintenance and Rehabilitation Contractor as contained in, referred to, or inferred from the Maintenance and Rehabilitation Contract, except for the "Additional Letter of Credit" (as defined in the Maintenance and Rehabilitation Contract) provided in accordance with the Maintenance and Rehabilitation Contract, shall be assigned, novated or granted, as required by the City or the Substitute, as applicable, each acting reasonably, to the City or the Substitute, as applicable, and the Maintenance and Rehabilitation Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Maintenance and Rehabilitation Contractor, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
  - (iv) at the City's request, the Maintenance and Rehabilitation Contractor shall enter into, and shall cause the Maintenance and Rehabilitation Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and the City shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including an agreement between the City or the Substitute, as applicable, and the Maintenance and Rehabilitation Contractor, acceptable to the City and the Maintenance and Rehabilitation Contractor, each acting reasonably, on substantially the same terms as the Maintenance and Rehabilitation Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with the City and the Substitute in order to achieve a smooth transfer of the Maintenance and Rehabilitation Contract to the City or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Maintenance and Rehabilitation Contract, ongoing supervisory activities and scheduling.

- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Maintenance and Rehabilitation Contractor receives a Step-In Notice, the Maintenance and Rehabilitation Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Maintenance and Rehabilitation Contract that it is or has validly exercised those step-in rights. If the Maintenance and Rehabilitation Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective.
- (e) If the City gives a Step-In Notice within the time provided hereunder at any time after the Maintenance and Rehabilitation Contractor has terminated the Maintenance and Rehabilitation Contract or treated it as having been repudiated by Project Co or discontinued the Maintenance and Rehabilitation Contractor's performance thereunder in accordance with the terms of this Maintenance and Rehabilitation Contractor's Direct Agreement, the Maintenance and Rehabilitation Contractor agrees that the Maintenance and Rehabilitation Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and the City shall pay the Maintenance and Rehabilitation Contractor's reasonable costs for re-commencing the obligations it has under the Maintenance and Rehabilitation Contract and the Maintenance and Rehabilitation Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Maintenance and Rehabilitation Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

## **7. MAINTENANCE AND REHABILITATION PROVIDER LIABILITY**

- (a) The liability of the Maintenance and Rehabilitation Contractor hereunder shall not be modified, released, diminished or in any way affected by:
  - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for the City, or by any failure or omission to carry out any such inspection, investigation or enquiry;
  - (ii) the appointment by the City of any other person to review the progress of or otherwise report to the City in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to the City,

provided always that nothing in this Section 7 shall modify or affect any rights which the Maintenance and Rehabilitation Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event the City delivers a Step-In Notice, the Maintenance and Rehabilitation Contractor shall have no greater liability to the City or any Substitute than it would have had to Project Co under the Maintenance and Rehabilitation Contract, and the Maintenance and Rehabilitation Contractor shall be entitled in any proceedings by the City or any Substitute to rely on any liability limitations in the Maintenance and Rehabilitation Contract.

## **8. PROJECT CO AS PARTY**

Project Co acknowledges and agrees that the Maintenance and Rehabilitation Contractor shall not be in breach of the Maintenance and Rehabilitation Contract by complying with its obligations hereunder.

**9. MAINTENANCE AND REHABILITATION GUARANTOR AS PARTY**

The Maintenance and Rehabilitation Guarantor agrees with the City that the Maintenance and Rehabilitation Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Maintenance and Rehabilitation Contractor of a Step-In Notice and without the requirement of any further action on the part of the City, and agrees that the Maintenance and Rehabilitation Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Maintenance and Rehabilitation Guarantor enters into this Maintenance and Rehabilitation Contractor's Direct Agreement solely for the purposes of this Section 9.

**10. ASSIGNMENT**

- (a) Project Co shall not, without the prior written consent of the City, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Maintenance and Rehabilitation Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) The City may assign or otherwise dispose of the benefit of the whole or part of this Maintenance and Rehabilitation Contractor's Direct Agreement to any person to whom the City may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Maintenance and Rehabilitation Contractor of such assignment or disposition.
- (c) The Maintenance and Rehabilitation Contractor shall not, without the prior written consent of the City and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Maintenance and Rehabilitation Contractor's Direct Agreement, except as may be permitted under the Maintenance and Rehabilitation Contract.

**11. NOTICES**

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

If to the City:

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

- If to Project Co:
- Attention: [REDACTED]  
Email: [REDACTED]
- TransitNEXT General Partnership  
[REDACTED]
- Email: [REDACTED]  
Attn: [REDACTED]
- If to the Maintenance and Rehabilitation Contractor:
- [REDACTED]
- Attention: [REDACTED]  
Fax: [REDACTED]  
Email: [REDACTED]  
Copy to: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- If to the Maintenance and Rehabilitation Guarantor:
- [REDACTED]
- Attention: [REDACTED]  
Title: [REDACTED]  
Email: [REDACTED]  
With copy to: [REDACTED]
- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Maintenance and Rehabilitation Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(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.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
- (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
- (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **12. AMENDMENTS**

This Maintenance and Rehabilitation Contractor's 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 Maintenance and Rehabilitation Contractor's Direct Agreement.

## **13. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Maintenance and Rehabilitation Contractor's 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.

## **14. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Maintenance and Rehabilitation Contractor's 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 Maintenance and Rehabilitation Contractor's Direct Agreement, of principal and agent.

## **15. ENTIRE AGREEMENT**

Except where provided otherwise in this Maintenance and Rehabilitation Contractor's Direct Agreement, this Maintenance and Rehabilitation Contractor's 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 Maintenance and Rehabilitation Contractor's Direct

Agreement.

**16. SEVERABILITY**

Each provision of this Maintenance and Rehabilitation Contractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Maintenance and Rehabilitation Contractor's 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 Maintenance and Rehabilitation Contractor's Direct Agreement. If any such provision of this Maintenance and Rehabilitation Contractor's 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 Maintenance and Rehabilitation Contractor's Direct Agreement as near as possible to its original intent and effect.

**17. ENUREMENT**

This Maintenance and Rehabilitation Contractor's 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.

**18. GOVERNING LAW AND JURISDICTION**

- (a) This Maintenance and Rehabilitation Contractor's 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 Maintenance and Rehabilitation Contractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**19. [INTENTIONALLY DELETED]**

**20. FURTHER ASSURANCE**

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

**21. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Maintenance and Rehabilitation Contractor's 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.

**22. COUNTERPARTS**

This Maintenance and Rehabilitation Contractor's 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 Maintenance and Rehabilitation Contractor's Direct Agreement which was so faxed.

**IN WITNESS WHEREOF** the Parties have executed this Maintenance and Rehabilitation Contractor's Direct Agreement as of the date first above written.

**THE CITY OF OTTAWA**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

**TRANSITNEXT GENERAL PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**[REDACTED]**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

**SCHEDULE 6**

**INDEPENDENT CERTIFIER AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of March, 2019

**BETWEEN:**

**THE CITY OF OTTAWA**

(the “**City**”)

**AND**

**TRANSITNEXT GENERAL PARTNERSHIP, [REDACTED]**

(“**Project Co**”)

**AND**

**[REDACTED]**

(the “**Independent Certifier**”)

**WHEREAS:**

- A. The City and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

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

**1. DEFINITIONS**

**1.1 Definitions**

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (i) “**Certification Services**” means:
  - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
  - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
  - (C) all other functions or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
- (ii) “**Certification Services Variation**” is any change to the Certification Services.
- (iii) “**Contract Material**” means all material:
  - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
  - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
- (iv) “**Contribution Agreement**” means either the agreement entered into by the City and the Government of Canada, represented by the Ministry of Infrastructure and Communities, or the agreement entered into by the City and the Government of Ontario, represented by the Ministry of Transportation, for the contribution of funding for the Project, and “**Contribution Agreements**” means both.
- (v) “**Contribution Agreement Party**” means either the Government of Canada, represented by the Ministry of Infrastructure and Communities, or the Government of Ontario, represented by the Ministry of Transportation, and “**Contribution Agreement Parties**” means both.
- (vi) “**Earned Value Measurement Techniques**” means the techniques used to measure Earned Value established by Project Co and agreed with the Independent Certifier in accordance with the “Practice Standard for Earned Value Management” (2nd Edition, published in 2011 by the Project Management Institute, Inc.).
- (vii) “**Fee**” means the fees payable by the City and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
- (viii) “**IC Monthly Report**” has the meaning given in Appendix A to this Independent Certifier Agreement.
- (ix) “**IC Quarterly Report**” has the meaning given in Appendix A to this Independent Certifier Agreement.

- (x) “**Intellectual Property**” means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.
- (xi) “**PA Parties**” means both the City and Project Co, and “**PA Party**” means either the City or Project Co, as the context requires.
- (xii) “**Project Agreement**” means that certain project agreement made on or about the date hereof between the City and Project Co with respect to the design, construction, financing, maintenance and rehabilitation of the Trillium Line Extension Project.

## **2. INTERPRETATION**

### **2.1 Interpretation**

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
  - (i) words denoting the singular number include the plural and vice versa;
  - (ii) words denoting individuals include corporations and vice versa;
  - (iii) headings are for convenience only and do not affect interpretation;
  - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
  - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
  - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
  - (vii) words denoting any gender include all genders;
  - (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
  - (ix) a reference to “\$” is to Canadian currency;
  - (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
  - (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
  - (xii) unless otherwise indicated, all time periods will be strictly construed.

## **2.2 Obligations and Exercise of Rights by PA Parties**

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

## **3. ROLE OF THE INDEPENDENT CERTIFIER**

### **3.1 Engagement**

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project. The Independent Certifier shall not enter into any separate agreement with either PA Party in connection with the Project without the prior written consent of the other PA Party.
- (d) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Sections 9.4 and 9.5 of this Independent Certifier Agreement.
- (e) The PA Parties acknowledge and agree that the Independent Certifier may rely on the assessment report prepared by the Independent Safety Assessor with respect to the safety certification of the System Infrastructure. The Independent Certifier acknowledges and agrees that, in carrying out the Certification Services, it shall be bound to the assessment report and shall consider the Independent Safety Assessor's views with respect to the safety of the System Infrastructure in making its determination as to whether Project Co has satisfied the conditions of Substantial Completion.
- (f) The PA Parties acknowledge and agree that, notwithstanding anything to the contrary in this Agreement, the Certification Services described in paragraph (hh) of Appendix A do not, nor shall such Certification Services be construed so as to, change, modify or have any impact whatsoever on the PA Parties' respective rights, entitlements and obligations as against each other pursuant to the provisions of the Project Agreement.

### **3.2 Acknowledgement of Independent Certifier**

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

**3.3 Standard of Care**

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

**3.4 Duty of Independent Judgment**

- (a) In exercising its Certification Services, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
  - (ii) act reasonably and professionally;
  - (iii) act in a timely manner:
    - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
    - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
  - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier represents and warrants that will use its best skill and judgment in providing the Certification Services, and that information provided and/or submitted to the PA Parties in accordance with this Independent Certifier Agreement is true and accurate, and prepared in good faith to the best of the Independent Certifier's skill, judgment and knowledge.
- (d) The Independent Certifier acknowledges that all Certification Services, Contract Material and all determinations, findings, reports, certificates and other information delivered by the Independent Certifier to the City pursuant to the Project Agreement may be relied upon by the Contribution Agreement Parties, and that the Independent Certifier shall owe each an equal duty of care as is owed to the City hereunder, notwithstanding the fact that the Contribution Agreement Parties are not parties to this Independent Certifier Agreement or the Project Agreement. The Independent

Certifier will confirm the foregoing directly to either Contribution Agreement Party, if requested by the City.

### **3.5 Authority to Act**

- (a) The Independent Certifier:
- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
  - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
  - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.
- (b) The Independent Certifier will confirm the foregoing directly to either Contribution Agreement Party, if requested by the City.

### **3.6 Knowledge of the PA Parties' Requirements**

- (a) The Independent Certifier warrants that:
- (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
  - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
  - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
  - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at or on the Lands and Site including restrictions on any such access or protocols that are required; and
  - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

### **3.7 Co-ordination and Information by Independent Certifier**

- (a) The Independent Certifier must:
- (i) fully cooperate with the PA Parties and their consultants and advisors;

- (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
- (iii) carefully co-ordinate the Certification Services with the safety assessment performed by the Independent Safety Assessor;
- (iv) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties;
- (v) include both PA Parties in all discussions, meetings, or any other communications regarding the Project;
- (vi) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party; and
- (vii) provide a copy of the Contract Material to each of the Contribution Agreement Parties at the same time as it is provided to the PA Parties. In respect of such Contract Material, either Contribution Agreement Party may make inquiries of the Independent Certifier and request further investigation or clarification in connection with, and subject to, its contribution agreement.

### **3.8 Conflict of Interest**

- (a) The Independent Certifier warrants that:
  - (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
  - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

### **3.9 Independent Certifier Personnel**

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) Any replacement of the individuals listed in Appendix C is subject to the PA Parties' prior written approval.

- (c) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Works shall:
- (i) possess a current professional designation of not less than membership in Professional Engineers Ontario (PEO), the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional or consulting designation recognized in North America for Mechanical, Electrical, Civil, Structural, Transportation, Geotechnical, Mining, Tunnels, Environmental, Utilities, Rail Systems, and Vehicles and Industrial leads;
  - (ii) possess a current professional designation of not less than Professional Quantity Surveyors (PQS) for the cost estimator and any individuals who will prepare and evaluate construction and development information for the cost control and Works measurements for Payment;
  - (iii) have demonstrated competence in the planning, design, construction and commissioning of comparable and complex facilities and in having completed or monitored the planning, design, construction and commissioning of a comparable light rail transit systems;
  - (iv) have an understanding of the appropriate standards, guidelines and policies related to planning, design, construction and commissioning for light rail transit systems,;
  - (v) have an understanding of any documentation to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but any pre-commissioning and post-commissioning activities; and
  - (vi) have the relevant qualifications for their specified area of expertise and membership to the relevant professional bodies which licences them to give their opinions and carry out the relevant works as detailed within this agreement.
- (d) The Independent Certifier shall furnish the City with evidence satisfactory to the City of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Works.
- (e) The Independent Certifier shall engage the personnel listed in Appendix C in all day-to-day activities relevant to their area of expertise for the Certification Services.

### **3.10 Minimize Interference**

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

## **4. ROLE OF THE PA PARTIES**

### **4.1 Assistance**

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

#### **4.2 Instructions in Writing**

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

#### **4.3 Information and Services**

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to certify Construction Period Payments and to determine whether Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.
- (b) Project Co shall promptly provide all information received from the Independent Safety Assessor, including the assessment report, required in order for the Independent Certifier to determine whether Substantial Completion and Final Completion have occurred.

#### **4.4 Additional Information**

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
  - (i) the Independent Certifier must give notice in writing to the Project Co Representative or the City Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
  - (ii) Project Co or the City, as the case may be, must arrange the provision of the required information, documents or particulars.

#### **4.5 Right to Enter and Inspect**

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Lands, the System Infrastructure or the Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
  - (i) observance of the reasonable rules of Project Co as to safety and security for the Lands, the System Infrastructure and the Works;
  - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence on the Lands, the System Infrastructure or the Works; and
  - (iii) not causing any damage to the Lands, the System Infrastructure or the Works.

#### **4.6 PA Parties Not Relieved**

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

**4.7 PA Parties not Liable**

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

**5. CERTIFICATION QUALITY PLAN**

**5.1 Certification Quality Plan**

- (a) The Independent Certifier must:
- (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services, including but not limited to timelines, deliverables and input required from the PA Parties, that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the City Representative and the Project Co Representative;
  - (ii) within 15 days after the date of this Independent Certifier Agreement, provide a draft of such certification quality plan to each of the City Representative and the Project Co Representative;
  - (iii) within 30 days after the date of this Independent Certifier Agreement, provide the final certification quality plan to each of the City Representative and the Project Co Representative;
  - (iv) if satisfactory to each of the City Representative and the Project Co Representative, implement such certification quality plan; and
  - (v) if not satisfactory to each of the City Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the City Representative and the Project Co Representative, and implement it if satisfactory to each of the City Representative and the Project Co Representative.

**5.2 Certification Quality Plan not to Relieve Independent Certifier**

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
- (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
  - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the City Representative or the Project Co Representative.

## **6. SUSPENSION**

### **6.1 Notice**

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
  - (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
  - (ii) in any other case, by the PA Parties giving 7 days' joint notice in writing to the Independent Certifier.

### **6.2 Costs of Suspension**

- (a) The Independent Certifier will:
  - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
  - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

### **6.3 Recommencement**

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

## **7. INSURANCE AND LIABILITY**

### **7.1 Independent Certifier's Insurance**

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
  - (i) professional liability insurance:
    - (A) in the amount of \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
    - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
  - (ii) commercial general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.

- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

## **7.2 Workers' Compensation Insurance**

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

## **8. PAYMENT FOR SERVICES**

### **8.1 Payment of Fee**

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay one-half of the Fee to the Independent Certifier is: (i) a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement, and (ii) contingent upon the Independent Certifier issuing a separate invoice to each PA Party for its one-half share of a given payment and providing each PA Party with a copy of the related separate invoice issued to the other PA Party.
- (c) The Fee includes all taxes (except for HST), overheads and profit, all labour and materials, insurance costs, travel, hospitality, food and incidental expenses, and all other overhead including any fees or other charges required by law to perform the Certification Services.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$[REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

## **9. CERTIFICATION SERVICES VARIATIONS**

### **9.1 Notice of Certification Services Variation**

- (a) If the Independent Certifier believes, other than a "Certification Services Variation Order" under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
  - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
  - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the City Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.

- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

## **9.2 No Adjustment**

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

## **9.3 External Services**

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

## **9.4 Certification Services Variation Procedure**

- (a) The City Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the City Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the City Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
  - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
  - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

## **9.5 Cost of Certification Services Variation**

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
  - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
  - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
  - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the City Representative and the Project Co Representative jointly.

- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

## **10. TERM AND TERMINATION**

### **10.1 Term**

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
- (i) the completion of the Works and the performance of the Certification Services set forth herein; or
  - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

### **10.2 Notice of Breach**

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
  - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

### **10.3 Termination for Breach**

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

### **10.4 Termination for Financial Difficulty or Change in Control**

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
- (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
  - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

### **10.5 Termination for Convenience**

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

## **10.6 Independent Certifier's Rights upon Termination for Convenience**

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
- (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
  - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
    - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
    - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

## **10.7 Procedure upon Termination**

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4 or 10.5 or otherwise), the Independent Certifier must:
- (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
  - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
  - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

## **10.8 Effect of Termination**

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

## **10.9 Survival**

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7 and 12.8 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

**11. INDEMNITY**

**11.1 PA Parties to Save Independent Certifier Harmless**

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
  - (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);
  - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
  - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

**11.2 Independent Certifier to Save PA Parties Harmless**

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
  - (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1) directly caused the losses described in Section 11.2(a); or
  - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

### **11.3 Conduct of Claims**

- (a) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix D – Conduct of Claims to this Independent Certifier Agreement.

## **12. GENERAL**

### **12.1 Entire Agreement**

- (a) Except where provided otherwise in this Independent Certifier Agreement, this Independent Certifier 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 Independent Certifier Agreement.

### **12.2 Negation of Employment**

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

### **12.3 Waiver**

- (a) No waiver made or given by a party under or in connection with this Independent Certifier 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.

### **12.4 Notices**

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

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

If to Project Co: TransitNEXT General Partnership  
[REDACTED]  
Email: [REDACTED]  
Attn.: [REDACTED]

If to the Independent Certifier: [REDACTED]  
[REDACTED]  
Email: [REDACTED]  
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(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.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.4.

- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **12.5 Transfer and Assignment**

- (a) The Independent Certifier:
  - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion (including, in respect of the City, if so required pursuant to a Contribution Agreement); and
  - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

## **12.6 Governing Laws and Jurisdictions**

- (a) This Independent Certifier 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 PA Parties and the Independent Certifier 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 Independent Certifier Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Independent Certifier Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

## **12.7 City Designate**

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of the City under this Independent Certifier Agreement and Project Co and the Independent Certifier may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation

and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this Independent Certifier Agreement shall be in no way affected by reason of any such designation. Project Co and the Independent Certifier acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

## **12.8 Confidentiality**

- (a) The Independent Certifier must ensure that:
  - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
  - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non-disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

## **12.9 Contract Material**

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

**12.10 Amendment**

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the PA Parties (provided that, in respect of the City, such agreement may be subject to its obligations under a Contribution Agreement and require the consent of a Contribution Agreement Party) and the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent Certifier Agreement.

**12.11 Severability**

- (a) Each provision of this Independent Certifier Agreement shall be valid and enforceable to the fullest extent permitted by law. If the courts of a competent jurisdiction shall declare any provision of this Independent Certifier Agreement invalid, unenforceable or illegal, 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 Independent Certifier Agreement. If any such provision of this Independent Certifier 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 Independent Certifier Agreement as near as possible to its original intent and effect.

**12.12 Enurement**

- (a) This Independent Certifier Agreement shall enure to the benefit of, and be binding on, each of the parties and their respective successors and permitted transferees and assigns.

**12.13 Counterparts**

- (a) This Independent Certifier 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 Independent Certifier Agreement which was so faxed.

**12.14 Maintenance of Records**

- (a) The Independent Certifier shall retain and maintain in safe storage, at its expense, complete and accurate records related to all work performed under this Independent Certifier Agreement (i) for a minimum period of 7 years after Substantial Completion or such longer period as required by Applicable Law, or (ii) until delivery of such Contract Material to the PA Parties in accordance with Section 10.7(a)(ii), and such records will be made available to the PA Parties and/or Contribution Agreement Parties upon request.

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

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

**CITY OF OTTAWA**

**Per:**

\_\_\_\_\_  
**Name:** [REDACTED]

**Title:** [REDACTED]

**TRANSITNEXT GENERAL PARTNERSHIP**

**Per:**

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

**Title:**

**Per:**

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

**Title:**

I/We have authority to bind the partnership.

[REDACTED]

**Per:**

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

**Title:**

**Per:**

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

**Title:**

I/We have authority to bind the corporation.

**APPENDIX A**  
**CERTIFICATION SERVICES**

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall provide the following:

- (a) Develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services including timelines, deliverables and a description of the input required from the PA Parties to carry out the Certification Services.
- (b) Receive, monitor and review all relevant Project documentation including drawings, plans, reports, certifications, schedules, letters, notices and test results as necessary for the Independent Certifier to be informed as to the progress of the Works (including, for certainty, the reports described in Section 22.2(b) and Section 22.3 of the Project Agreement), and to provide an opinion in the event of a Dispute related to the development of the design. The Independent Certifier personnel listed in Appendix C shall be up to date with all Project documentation relevant to their area of expertise.
- (c) Review information relating to Construction Period Quality Failures, Delay Events and the events described in Section 40.2 of the Project Agreement, and Compensation Events.
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consult with the relevant party.
- (e) In accordance with Section 11.1(b) of the Project Agreement, attend all meetings of and participate, as necessary, in the activities of the Works Committee.
- (f) Identify any risks that may impede the issuance of the Substantial Completion Certificate or the Final Completion Certificate and inform the PA Parties thereof.
- (g) In accordance with Section 25.13(b)(ii) of the Project Agreement, certify the cost of remediation and correction of Warranty Work related to New Municipal Infrastructure.
- (h) In accordance with Section 11.6 of the Project Agreement, perform all responsibilities of the Independent Certifier in connection with Proceeding At Risk Matters, including attending all meetings and deliberations of the Works Committee with respect to Proceeding At Risk Matters.
- (i) Issue its opinion as to whether the City acted reasonably in delivering the subject Proceeding At Risk Notice pursuant to Section 11.6(e) of the Project Agreement.
- (j) Review the draft Testing and Commissioning Submittals and the detailed test, test methodology and expected test results proposed by Project Co, including any review comments from the City, and provide a report on the effectiveness of the Testing and Commissioning Program, to identify any errors or omissions and to report any risks.
- (k) Monitor, and report on, the implementation of the Testing and Commissioning Plan (as indicatively described in Schedule 14 – Testing and Commissioning to the Project Agreement) and other tests, including re-tests, to be performed as set out in the Testing and Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion.

- (l) In accordance with Schedule 14 – Testing and Commissioning, validate Trial Running acceptance for the System Infrastructure.
- (m) Witness the implementation of a sample of the Commissioning Tests and a sample of the other testing and commissioning procedures at random times, locations and frequencies, in each case to the extent required for the Independent Certifier to verify that the requirements of Substantial Completion and Final Completion have been met.
- (n) In accordance with Sections 20.13(j) and 20.13(k), assist the City with determinations related to Cash Allowances in respect of Utility Works, including certifying any Utility Works undertaken by Project Co and evaluating all Requests for Utility Works Payment Approvals submitted by Project Co.
- (o) In accordance with Sections 25.13 of the Project Agreement, make a determination with respect to unresolved Testing and Commissioning or Handover issues.
- (p) Prior to any certification, consider the views and comments of Project Co, the City (including their consultants and advisors) and the Independent Safety Assessor, as applicable, in relation to the satisfaction of the conditions for certification.
- (q) Employing the relevant personnel, conduct regular inspections of the Works and attend site progress meetings at a minimum on a monthly basis or more regularly as deemed necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement. Report on the observations, findings and potential risks to certification as a result of the regular inspections as part of the IC Monthly Report.
- (r) Upon receipt of notice from Project Co requesting the issuance of an IC Initial Capital Investment Certificate, Substantial Completion Certificate (or Interim Substantial Completion Certificate as the case may be) or Final Completion Certificate, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
  - (i) issue the applicable certificate; or
  - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (s) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (o) of this Appendix A until the issuance of the applicable certificate.
- (t) In accordance with Sections 25.7, 25.8 and 25.9 of the Project Agreement, perform all responsibilities of the Independent Certifier in connection with the Minor Deficiencies regime.
- (u) After Substantial Completion, reconcile Project Co invoices for expenditure recovery against the budgets of the City.
- (v) Review and monitor the installation of all equipment, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “**Installed Equipment**”) into the System Infrastructure by the City or any agent or contractor of the City either before or after Substantial Completion and provide a report to the City and Project Co identifying any damage to the System Infrastructure which has been caused

as a result of the installation of such Installed Equipment into the System Infrastructure by the City, its contractors and/or agents.

- (w) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 26 – Dispute Resolution Procedure to the Project Agreement.
- (x) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services.
- (y) Provide periodic reports to the PA Parties, as follows:
  - (i) a progress report on the progress of the Works no later than fifteen Business Days following the end of each month of the Construction Period in respect of the previous month or as otherwise agreed by the PA Parties (the “IC Monthly Report”) which includes the following:
    - (A) summary of activities carried out by the Independent Certifier, making specific reference to each of the Independent Certifier’s obligations;
    - (B) the status of any risks that may impede the issuance of the Substantial Completion Certificate or the Final Completion Certificate;
    - (C) an opinion on Non-Conformances, if any, and whether or not such Non-Conformances are of the extent and nature that would normally be expected on projects of this kind;
    - (D) progress on all aspects of the Works; and
    - (E) Commencing no less than 180 days prior to Scheduled Substantial Completion Date, the IC Monthly Report shall contain specific reference to and listing of the work that needs to be done before a Substantial Completion Certificate or Final Completion Certificate can be issued;
  - (ii) Accompanying the IC Monthly Reports delivered for the months of May, August, November and February, a quarterly report (the “**IC Quarterly Report**”) for the quarters ending March 31st, June 30th, September 30th and December 31st respectively, in substantially the form as that in Appendix E and that contains the following information certified in accordance with the standard of care set out in Section 3.3 of the Independent Certifier Agreement:
    - (A) the extent (expressed as a percentage) of completion of the Works as of the last day of the applicable quarter;
    - (B) the value of the Works completed as of the last day of the applicable quarter;
    - (C) the forecasted extent (expressed as a percentage) of completion of the Works as of the last day of the applicable quarter and for the next four quarters; and
    - (D) the forecasted value of the Works anticipated to be completed as of the last day of the applicable quarter and for the next four quarters.

- (z) Participate in meetings with the PA Parties as required for the Independent Certifier to perform Certification Services.
- (aa) Acknowledge receipt of all Design Certificates and Construction Certificates delivered by Project Co in accordance with Schedule 10 – Review Procedure to the Project Agreement.
- (bb) Provide the Certification Services with respect to Construction Period Payments set out in Schedule 20 – Construction Payments, including use and application of the Earned Value Measurement Techniques and the Credit Rules attached hereto as Appendix F;
- (cc) In accordance with Section 16.2(i) of the Project Agreement, make a determination (or appoint an independent and suitably qualified person to make such determination) with respect to the party responsible for any Contamination located on, in or under or migrating to or from the Lands;
- (dd) In accordance with Section 16.3(f) of the Project Agreement, make a determination (or appoint an independent and suitably qualified person to make such determination) with respect to the nature or extent of the actions required to be performed by Project Co to not disturb any and all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Lands, including:
  - (i) ceasing any Project Operations in so far as performing such Project Operations would endanger the item or prevent or impede its excavation;
  - (ii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and
  - (iii) ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities.
- (ee) In accordance with Section 16.5(e) of the Project Agreement, make a determination (or appoint an independent and suitably qualified person to make such determination) with respect to the nature or extent of the actions required to be performed by the City to meet the requirements of the Existing Vehicle Maintenance Standard, as defined in Schedule 1 – Definitions and Interpretation.
- (ff) In accordance with Section 9.11 of the Project Agreement, provide the Certification Services with respect to the RVSC Fixed Cost Amount under the Revenue Vehicle Supply Contract.
- (gg) Provide advice on other matters that may arise that both PA Parties may jointly require.
- (hh) To the extent not already contemplated in the other Certification Services or otherwise in this Agreement, review and certify the determination of eligible costs under the Contribution Agreements to the Contribution Agreement Parties, including:
  - (i) conducting a due diligence assessment of the schedule and cash flow forecast and certifying that this schedule and cash flow forecast is achievable, reviewing and certifying that eligible costs are reasonable and meet the eligible cost criteria in a Contribution Agreement, and reviewing and certifying the percentage of a Contribution Agreement Party's eligible costs of the total eligible costs under a Contribution Agreement;

- (ii) reviewing and certifying for each claim by the City under a Contribution Agreement, including interim claims, that all costs are eligible costs and that the work has been constructed and completed in accordance with the terms and conditions of the Contribution Agreement;
- (iii) confirming to the Contribution Agreement Parties that all information provided and/or submitted to the PA Parties and/or the Contribution Agreement Parties in accordance with this Agreement is true and accurate and prepared in good faith to the best of its skill, judgement and knowledge;
- (iv) Executing and delivering certificates in the form attached hereto as Appendix G when requested by the City.

## APPENDIX B

### INDEPENDENT CERTIFIER FEE

The Fee shall be invoiced by the Independent Certifier to each PA Party in accordance with Section 8 of the Independent Certifier Agreement, using invoices in form and substance acceptable to the PA Parties, acting reasonably, on a monthly basis. The total fixed fee of \$[REDACTED], plus HST, for all Certification Services described in Appendix A (other than item (gg) in Appendix A), shall be accounted for and invoiced in accordance with monthly billing schedule attached to this Appendix B. Such fixed fee shall not be subject to escalation or adjustment except by Certification Services Variation. Each monthly invoice shall also include, and separately identify, any amounts claimed for services performed pursuant to any Certification Services Variation, and/or Certification Services jointly required by the PA Parties in accordance with item (gg) in Appendix A, for such payment period, and shall set out as a separate line item the HST payable. Each PA Party shall pay its respective portion of the Fee within 30 days of receipt of a complete and valid invoice.

The following hourly rates shall apply for Certification Services jointly required by the PA Parties in accordance with item (gg) in Appendix A, and may apply to Certification Services Variations in accordance with Sections 9.4 and 9.5 of the Independent Certifier Agreement. Hourly rates set out below are all inclusive and include applicable taxes (other than HST), all labour and materials, insurance costs, disbursements (examples: duplicating, delivery and communications) and all other overhead including any fees or other charges required by law. The PA Parties will not reimburse the Independent Certifier for any costs or expenses for hospitality, food or other incidental expenses.

<u>Independent Certifier Personnel (Appendix C)</u>	<u>Hourly Rate</u>
Team Lead [REDACTED]	\$[REDACTED]
Back-up Team Lead [REDACTED]	\$[REDACTED]
Project Manager / Schedule Advisor / Payment Certifier [REDACTED]	\$[REDACTED]
Chief Estimator [REDACTED]	\$[REDACTED]
Lead Electrical & Commissioning [REDACTED]	\$[REDACTED]
Lead Mechanical & Commissioning [REDACTED]	\$[REDACTED]
Back-up Electrical & Commissioning [REDACTED]	\$[REDACTED]
Project Coordinator & Document Control [REDACTED]	\$[REDACTED]
Project Coordinator & Document Control [REDACTED]	\$[REDACTED]
Back-up Mechanical & Commissioning [REDACTED]	\$[REDACTED]
Engineer – Advisory and Support	\$[REDACTED]
<u>Other Independent Certifier Personnel</u>	
Senior Partner	\$[REDACTED]
Electrical QS Partner	\$[REDACTED]
Architectural / Structural QS Partner	\$[REDACTED]
Sr. Construction Specialist	\$[REDACTED]
Engineer	\$[REDACTED]
Mechanical Quantity Surveyor	\$[REDACTED]
Senior Associate	\$[REDACTED]
Associate	\$[REDACTED]
Senior Quantity Surveyor	\$[REDACTED]
Intermediate Quantity Surveyor	\$[REDACTED]
Junior Quantity Surveyor	\$[REDACTED]
Technical Support	\$[REDACTED]

## APPENDIX C

### INDEPENDENT CERTIFIER PERSONNEL

The following personnel shall be involved in the performance of the Certification Services:

<b>Name</b>	<b>Position</b>
[REDACTED]	Team Lead
[REDACTED]	Back-up Team Lead
[REDACTED]	Project Manager / Schedule Advisor / Payment Certifier
[REDACTED]	Chief Estimator
[REDACTED]	Lead Electrical & Commissioning
[REDACTED]	Lead Mechanical & Commissioning
[REDACTED]	Back-up Electrical & Commissioning
[REDACTED]	Project Coordinator & Document Control
[REDACTED]	Project Coordinator & Document Control
[REDACTED]	Back-up Mechanical & Commissioning

## APPENDIX D

### CONDUCT OF CLAIMS

This Appendix D shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both the City and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an Indemnifier:
  - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which Section (3) of

this Appendix D relates.

- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2) of this Appendix D;
  - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) of this Appendix D or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
  - (iii) none of the Indemnifiers complies in any material respect with Section (3) of this Appendix D.
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) of this Appendix D applies. For greater certainty, the Independent Certifier acknowledges and agrees that where the City is the Beneficiary, the City may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to Section (5) of this Appendix D, then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
  - (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,
- provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.
- (7) Any person taking any of the steps contemplated by this Appendix D shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Independent Certifier Agreement.

APPENDIX E

FORM OF IC QUARTERLY REPORT

[ON THE INDEPENDENT CERTIFIER'S LETTERHEAD]

[date]

City of Ottawa

[insert address]

and to:

[Project Co]

[Project Co address]

Attention: [•]

Dear [•],[•] and [•]:

This report, for the quarter ending [•], is delivered to you pursuant to Section v(ii) of Appendix A of the Independent Certifier Agreement between the City of Ottawa and [Project Co] and is dated [•] (the "IC Agreement"). Terms not otherwise defined herein have the meaning ascribed to them in the IC Agreement.

All values stated herein are based on the cost of the Works and are exclusive of HST. This report has taken into account the following information: [insert particulars of sources of information (e.g., works reports, site visits) used to prepare the report].

Based on our analysis of the foregoing, we confirm the following to the best of our professional knowledge and judgment:

- As of the date hereof, the value of the Works is \$• and the Works are •% complete.
- At the end of this quarter, the estimated value of the Works will be \$• and the Works are forecasted to be •% complete.

We estimate that the value of the Works and the extent of their completion will be as follows for the next four quarters (not including the present quarter):

	[quarter end date]	[quarter end date]	[quarter end date]	[quarter end date]
\$				
%				

We have prepared this report for the specific use of the City of Ottawa and [Project Co]. This letter is not intended for general circulation, publication or reproduction for any other person or purpose without express written permission to each specific instance.

Yours truly,

[Name and Signature of Independent Certifier]

**APPENDIX F  
CREDIT RULES**

**1. CREDIT RULES FOR THE EVALUATION OF EARNED VALUE**

**1.1 Purpose of Credit Rules**

- (a) The Credit Rules set out requirements agreed between the City and Project Co for use and interpretation of the Earned Value Measurement Techniques, pursuant to Schedule 20 of the Project Agreement.

**1.2 Change of Credit Rules**

- (a) In the event that Project Co or the City propose a change to the Credit Rules, the Independent Certifier may agree to such proposed change to the Credit Rule, provided that:
- (i) any proposed change the Credit Rules will result in revised Credit Rules that:
    - (A) continue to meet the Earned Value Measurement Techniques; and
    - (B) follow the principles, guidance, and intent of the Credit Rules set out in this Attachment F, wherever possible;
  - (ii) any proposed change to the Credit Rules is subject to consultation with the City and Project Co at least three months prior to the first Construction Period that uses those revised Credit Rules;
  - (iii) the Independent Certifier considers any responses made by the City and Project Co to a proposed change to the Credit Rules and the Independent Certifier provides a report justifying its decision regarding acceptance or rejection of any proposal to change the Credit Rules; and
  - (iv) prior to the start of the first Construction Period that is to use the revised Credit Rules for the evaluation of Earned Value:
    - (A) the proposed changes to the Credit Rules are agreed to by the Independent Certifier; and
    - (B) both the City and Project Co receive the revised Credit Rules from the Independent Certifier.

**1.3 Selection of Measurement Methods**

- (a) In principle, when selecting the appropriate measurement methods from the Earned Value Measurement Techniques, the following principles shall be applied:
- (i) for tangible work or tasks taking three Construction Periods or more to perform, the measurement methods shall be considered in the following decreasing order of preference:
    - (A) firstly, physical measurement;

**Trillium Line Extension  
Ottawa Stage 2 LRT Project**

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- (B) secondly, weighted milestone; and
- (C) thirdly, percent complete;
- (ii) for tangible work or tasks taking one or two Construction Periods to perform, the measurement methods shall be considered in the following decreasing order of preference:
  - (A) fixed formula using the 0/100 method or 0/50/100 method; and
- (iii) for intangible work or tasks, the measurement methods shall be considered in the following decreasing order of preference:
  - (A) firstly, apportioned effort; and
  - (B) secondly, only where apportioned effort is not possible, level of effort.
- (b) Table 1 sets out the measurement methods that shall be used from the Earned Value Measurement Techniques for specific cost categories, unless there are technical reasons preventing these measurement methods from being used. The specific cost categories in Table 1 are set out in ‘Standard Cost Codes for Capital Projects – Definitions’, US Federal Transportation Administration.

<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
<b>10</b>	<b>Guideway</b>	
10.01	Guideway: at-grade exclusive right-of-way (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.04	Guideway: aerial structure (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.05	Guideway: Built-up fill	Activity completion and physical measurement using the fixed formula 0/100 method
10.06	Guideway: underground cut & cover (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.07	Guideway: underground tunnel (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.09	Track: Direct fixation	Activity completion and physical measurement using the fixed formula 0/100 method
10.10	Track: Embedded	Activity completion and physical

<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
		measurement using the fixed formula 0/100 method
10.11	Track: Ballasted	Activity completion and physical measurement using the fixed formula 0/100 method
10.12	Track: Special (switches, turnouts)	Activity completion and physical measurement using the fixed formula 0/100 method
<b>20</b>	<b>Stations, Stops, Terminals, Intermodals</b>	
20.01	At-grade station; stop; shelter; mall; terminal; platform	Activity completion and physical measurement using the fixed formula 0/100 method
20.03	Underground station; stop; shelter; mall; terminal; platform	Activity completion and physical measurement using the fixed formula 0/100 method
20.05	Joint development	Activity completion and physical measurement using the fixed formula 0/100 method
<b>30</b>	<b>Support Facilities: Yards, Shops and Admin Buildings</b>	
30.01	Administration Building: Office, sales, storage, revenue counting	Activity completion and physical measurement using the fixed formula 0/100 method
30.03	Heavy maintenance facility	Activity completion and physical measurement using the fixed formula 0/100 method
30.05	Yard and Yard Track	Activity completion and physical measurement using the fixed formula 0/100 method
<b>40</b>	<b>Sitework and Special Conditions</b>	
40.01	Demolition; clearing; earthwork	Activity completion and physical measurement using the fixed formula 0/100 method
40.02	Site utilities; utility relocation	Activity completion and physical measurement using the fixed formula 0/100 method
40.03	Hazardous material; contaminated soil mitigation; ground water treatments	Activity completion and physical measurement using the fixed formula 0/100 method
40.04	Environmental mitigation, e.g. wetlands,	Activity completion and physical

<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
	historic/archeologic, parks	measurement using the fixed formula 0/100 method
40.05	Site structures including retaining walls; sound walls and other structures	Activity completion and physical measurement using the fixed formula 0/100 method
40.06	Pedestrian and bike access and accommodation; landscaping	Activity completion and physical measurement using the fixed formula 0/100 method
40.07	Automobile; bus; van access ways including roads; parking lots	Activity completion and physical measurement using the fixed formula 0/100 method
40.08	Temporary facilities	Activity completion and physical measurement using the fixed formula 0/100 method
<b>50</b>	<b>Systems</b>	
50.01	Train control and signals	Activity completion and physical measurement using the fixed formula 0/100 method
50.02	Traffic signals and crossing protection	Activity completion and physical measurement using the fixed formula 0/100 method
50.03	Traction power supply and substations	Activity completion and physical measurement using the fixed formula 0/100 method
50.04	Traction power distribution and catenary	Activity completion and physical measurement using the fixed formula 0/100 method
50.05	Communications	Activity completion and physical measurement using the fixed formula 0/100 method
50.06	Fare collection system and equipment	Activity completion and physical measurement using the fixed formula 0/100 method
50.07	Central control	Activity completion and physical measurement using the fixed formula 0/100 method
<b>80</b>	<b>Professional Services and Agency Costs</b>	
80.01	Preliminary design	Weighted milestone
80.02	Final design	Weighted milestone

<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
80.03	Project management for design and construction	Apportioned effort
80.04	Construction administration and management	Apportioned effort
80.05	Professional liability and other insurance costs	Weighted milestone
80.06	Legal; permits; review fees by other agencies, cities, etc;	Weighted milestone
80.07	Surveys, testing (quality related), investigation, inspection	Weighted milestone or apportioned effort
80.08	Start up; testing and commissioning	Weighted milestone or apportioned effort
<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
<b>10</b>	<b>Guideway</b>	
10.01	Guideway: at-grade exclusive right-of-way (including trackwork)	Physical measurement
10.04	Guideway: aerial structure (including trackwork)	Physical measurement
10.06	Guideway: underground cut & cover (including trackwork)	Physical measurement
10.07	Guideway: underground tunnel (including trackwork)	Physical measurement
<b>20</b>	<b>Stations, Stops, Terminals, Intermodals</b>	
20.01	At-grade station; stop; shelter; mall; terminal; platform	Physical measurement
20.03	Underground station; stop; shelter; mall; terminal; platform	Physical measurement
<b>30</b>	<b>Support Facilities: Yards, Shops and Admin Buildings</b>	
30.03	Heavy maintenance facility	Physical measurement
<b>40</b>	<b>Sitework and Special Conditions</b>	
40.01	Demolition; clearing; earthwork	Physical measurement
40.02	Site utilities; utility relocation	Physical measurement
40.03	Hazardous material; contaminated soil mitigation; ground water treatments	Physical measurement or weighted milestone
40.05	Site structures including retaining walls; sound walls and other structures	Physical measurement
40.06	Pedestrian and bike access and	Physical measurement or weighted

<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
	accommodation; landscaping	milestone
40.07	Automobile; bus; van access ways including roads; parking lots	Physical measurement or weighted milestone
40.08	Temporary facilities	Physical measurement or weighted milestone
<b>50</b>	<b>Systems</b>	
50.01	Train control and signals	Physical measurement or weighted milestone
50.02	Traffic signals and crossing protection	Physical measurement or weighted milestone
50.03	Traction power supply and substations	Physical measurement or weighted milestone
50.04	Traction power distribution and catenary	Physical measurement or weighted milestone
50.05	Communications	Physical measurement or weighted milestone
50.06	Fare collection system and equipment	Physical measurement or weighted milestone
50.07	Central control	Physical measurement or weighted milestone
<b>80</b>	<b>Professional Services and Agency Costs</b>	
80.01	Preliminary design	Weighted milestone
80.02	Final design	Weighted milestone
80.03	Project management for design and construction	Apportioned effort
80.04	Construction administration and management	Apportioned effort
80.05	Professional liability and other insurance costs	Weighted milestone
80.06	Legal; permits; review fees by other agencies, cities, etc;	Weighted milestone
80.07	Surveys, testing (quality related), investigation, inspection	Weighted milestone or apportioned effort
80.08	Start up; testing and commissioning	Weighted milestone or apportioned effort

- (c) The measurement methods associated with procurement of materials shall be in accordance with the following principles:
- (i) except as set out in Section 1.3(c)(ii), the costs of materials used in construction shall be included in the cost of each construction task and shall be evaluated for the purposes of Earned Value as part of each construction task using physical measurement; and
  - (ii) the costs of rail and large long-lead equipment manufactured off-site before installation, such as transformers and packaged air conditioning units, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by Project Co to the supplier will not be credited for the purposes of Earned Value until the rail or large equipment manufactured off-site is delivered to the Lands or a bonded warehouse.
- (d) The measurement methods associated with procurement of plant, such as cranes and road vehicles, shall be in accordance with the following principles:
- (i) the costs of plant, such as cranes and road vehicles, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by Project Co to the supplier will not be credited for the purposes of Earned Value until the plant is delivered to the Lands or a bonded warehouse.
- (e) The measurement method to be used for the procurement of the Revenue Vehicles shall be evaluated and paid in accordance with Section 9.11 of the Project Agreement.
- (f) In order to make the measurement of Earned Value more efficient during mobilization, Project Co may choose to identify a tranche of its mobilization cost, the amount of which will be equal to the mobilization cost agreed to between Project Co and the Lenders or Lenders' Consultant of the Total Capital Cost that shall be automatically credited for the purposes of measuring Earned Value at Financial Close (the "**Mobilization Credit**"), where:
- (i) the sum of the costs identified to the Mobilization Credit and the costs identified to the cost codes from Table 1 shall remain equal to the Total Capital Cost;
  - (ii) the Mobilization Credit shall not include costs associated with the following cost codes from Table 1:
    - (A) 80.09 Other Transaction Costs during Bid and Construction Period; and
    - (B) 100.01 Financing Costs during Construction Period;
  - (iii) the scope of activity associated with the Mobilization Credit shall be documented by Project Co to the satisfaction of the Independent Certifier before the end of the first Construction Period Month in order to avoid double counting with the Earned Value for activities that are not included within the Mobilization Credit; and
  - (iv) the Earned Value for the activities included within the Mobilization Credit shall be credited as Earned Value without using a measurement method from the Earned Value Management Techniques.

**APPENDIX G**

**CONTRIBUTION AGREEMENT CERTIFICATES**

**[Federal and Provincial certificates to be appended upon execution.]**

## SCHEDULE 7

### MOBILITY MATTERS

#### 1. DEFINITIONS

Any capitalized term not defined in this Schedule 7 shall have the meaning given to such term in the Project Agreement. In this Schedule 7, the following definitions shall have the following meanings:

- 1.1 “**Aggregate Actual Lane Closures**” or “**AALC**” means the actual number of Lane Closures, measured in hours per hour type (“Peak,” Off Peak,” and “Night”).
- 1.2 “**Aggregate Actual Lane Closures Cost**” or “**AALCC**” means the total cost of Lane Closures.
- 1.3 “**Aggregate Target Lane Closures**” or “**ATLC**” means the total target Lane Closures, which,
  - (a) are set forth in the Lane Closure Target Letter; and
  - (b) include and account for all requirements of Schedule 15 - Output Specifications.
- 1.4 “**Aggregate Target Lane Closure Cost**” or “**ATLCC**” means the total cost of the target Lane Closures, as set forth in the Lane Closure Target Letter submitted by Project Co at Commercial Close and which has been accepted by the City.
- 1.5 “**Arterial**” has the meaning given in the City of Ottawa’s Road Classification System (City of Ottawa).
- 1.6 “**Blocks**” are the physical units upon which Lane Closure Costs are to be calculated for the purposes of this Schedule 7, and,
  - (a) for any streets proposed to be occupied by Project Co are delineated between two adjacent intersections, irrespective of whether the intersections are signalized or unsignalized.

For clarity, a laneway opening shall not constitute an intersection for the purposes of this Section 1.6.

- 1.7 “**Carleton University Roadways**” meaning roadways under the ownership and operations of Carleton University
- 1.8 “**Collector**” has the meaning given in the City of Ottawa’s Road Classification System (City of Ottawa).
- 1.9 “**Federal Roadways**” means roadways under the ownership and operation of the Federal Government and Ottawa International Airport Authority (OIAA).
- 1.10 “**High Cost Measures**” means, in respect of a Milestone period, discrete Lane Closure saving measures that incur capital expenditure greater than [REDACTED]% of the discrete Lane Closure savings cost.

- 1.11 **“Lane Closure” or “Lane Closures** “means any restriction or closure of a lane in any Block, as a result of Works, to bus or vehicular traffic or parking and loading between two intersecting streets, including tapers with the exception of where an equivalent facility to the one that has been closed has been provided in accordance with Section 1.11(c). All partial restrictions or closures within any Block will be considered as a full Lane Closure. Lane Closures will be measured on a per Block, per hour basis. **“Peak”** means Monday through Friday between the hours of 0630h – 0930h, or 1500h – 1830h. **“Night”** means the hours between 2200h – 0500h. **“Off Peak”** means all other hours not defined as “Peak” or “Night”. Lane Closures will no longer be in effect once Substantial Completion has been achieved:
- (a) lanes that have limited openings such as “local traffic only” shall be considered not available for use for the purpose of this Section 1.11; and
  - (b) any restriction or closure of a lane that is solely as a result of a Utility Company carrying out activities with respect to its own New Utility Company Infrastructure following the Handover of the applicable New Utility Company Infrastructure to such Utility Company shall be deemed not to constitute a Lane Closure or contribute to any Lane Closure for the purposes of this Schedule 7.
  - (c) where the traffic management associated with a lane closure provides an equivalent facility to the one closed with respect to a) traffic level of service, b) truck level of service, c) transit level of service, d) lane width, e) posted speed, and f) on-road cycling facilities, such a lane closure shall not be considered a “Lane Closure” for the purposes of this Schedule 7.
- 1.12 **“Lane Closure Adjustment” or “LCA”** means the deduction which may be made by The City from Project Co (which amount will be deducted from the Substantial Completion Payment) as calculated pursuant to Section 5.
- 1.13 **“Lane Closure Analysis Report”** has the meaning given to it in Section 2.2.
- 1.14 **“Lane Closure Measurement and Verification Plan”** has the meaning given to it in Section 7.2(j) of Part 7 to Schedule 15-2 – Design and Construction Requirements – Traffic Management and Construction Access of the Project Agreement.
- 1.15 **“Lane Closure Target Letter”** means the letter set out in Appendix D.
- 1.16 **“Left Turn Lane Closure”** means any restriction of an exclusive left turn lane within the Road Sections, of Arterial or Collector road classification, at the Site, such that the lane is not available for use by the public due to the Works. For clarity, lanes that have limited openings such as “local traffic only” shall be considered not available for use by the public for the purposes of this Section 1.16.
- 1.17 **“Local”** has the meaning given in City of Ottawa’s Road Classification System (City of Ottawa).
- 1.18 **“Arterial”** has the meaning given in the City of Ottawa’s Road Classification System (City of Ottawa).
- 1.19 **“Major Collector”** has the meaning given in the City of Ottawa’s Road Classification System (City of Ottawa).

- 1.20 “**Mobility Matters Review Meeting**” has the meaning given in Section 3.7.
- 1.21 “**Monthly Lane Closure Adjustment Contribution**” means the value for any given month that shall contribute to the Lane Closure Adjustment as calculated pursuant to Section 5.
- 1.22 “**Peak Hour Lane Interruptions**” means unplanned interruptions to the operation of roadway lanes, excluding BRT lanes, during Peak periods by either an unplanned event or a planned event exceeding the time restrictions granted. For further clarity Peak Hour Lane Interruptions would only be for interruptions caused by the actions of Project Co or their subcontractors.. Peak Hour Lane Interruptions as defined above are not included in AALC.
- 1.23 “**Right Turn Lane Closure**” means any restriction of an exclusive right turn lane within the Road Sections, of Arterial or Collector road classification, at the Site, such that it is not available for use by the public due to the Works. For clarity, lanes that have limited openings such as “local traffic only” shall be considered “not available for use by the public” for the purposes of this Section 1.23.
- 1.24 “**Road Sections**” means the defined portions of the Site where Works are to be undertaken in which the Unit Rate Prices for Lane Closure are to be applied for any Lane Closure, Left Turn Lane Closure or Right Turn Lane Closure. Each of the Road Sections has a Unit Price structure for Lane Closure costs per Block, defined in Appendix B to this Schedule, and based on the City’s roadway classification. Any portion of an individual roadway requiring Lane Closures shall be considered a Road Section. A Road Section can be a single isolated block, or a continuous stretch of adjacent blocks having the same roadway classification.. The Road Sections are delineated as follows:
- (a) Road Section 1 – Leitrim Road-Albion Road to Bowesville Road;
  - (b) Road Section 2 - Lester Road –Albion Road to Alert Road ;
  - (c) Road Section 3 – Hunt Club Road – Mac Street to McCarthy Road ;
  - (d) Road Section 4 – Uplands Drive – Breadner Blvd to Alert Road;
  - (e) Road Section 5 - Airport Parkway – Hunt Club Road to Lester Road/Uplands Drive;
  - (f) Road Section 6 – Earl Armstrong Road – Bowesville Road to High Road;
  - (g) Road Section 7 – Bowesville Road – Leitrim Road to Ficko Crescent;
  - (h) Road Section 8 - Carleton University Roadways;
  - (i) Road Section 9 – Federal Roadways (Ottawa International Airport); and
  - (j) Project Co shall include any additional Road Sections not identified in this Schedule 7, where Project Co identified lane closures requirements.
- 1.25 “**Traffic and Transit Management Plan**” or “**TTMP**” means the plan for the manner in which traffic and transit will be managed during construction activities and the method used to determine the magnitude of the impacts.

1.26 “**Unit Rate Price**” for each Lane Closure, Left Turn Lane Closure or Right Turn Lane Closure means the prices for each Block of each Road Section, and for each type of lane, as set out in Appendix B. The prices are hourly rates.

**2. CONTENT AND FORMAT OF THE LANE CLOSURE ANALYSIS REPORT**

2.1 Project Co shall quantify its projected occupation of lanes on City roadways on the basis of the formulae and procedures contained in this Schedule 7. Project Co shall monitor its occupation of the lanes on a monthly basis.

2.2 Project Co shall deliver to the City a report summarizing the findings of AALC (the “**Lane Closure Analysis Report**”), on a monthly basis, no later than 5 Business Days after the end of each month.

2.3 Project Co shall include copies of all documents to fully support the Lane Closure Analysis Report.

2.4 The Lane Closure Analysis Report shall, at a minimum, include the following information for the relevant month:

- (a) using the template shown in Appendix A to this Schedule, a summary of target and actual Lane Closures by Road Section and breakdown by road classification (Arterial, Major Collector, Collector, Local), location, time, date and duration, indicating Weekday Peak, Weekday Off Peak or Night/Weekend, including any exceptional changes forecasted for the upcoming monthly period (being changes of plus or minus [REDACTED]%)
- (b) projected Lane Closures for the remaining duration of the Construction Period along with trends and potential risks associated with these Lane Closures;
- (c) accurate and precise data in support of the items set out in Sections 2.4(a) and 2.4(b);
- (d) presentation of AALC and the AALCC for the applicable month, and on a cumulative basis as of the applicable month;
- (e) establishment of a basis for continued monitoring of Lane Closures and adjustments to the AALC;
- (f) outline of any outstanding issues from any previous Lane Closure Analysis Reports and mitigating strategies to address those issues;
- (g) adjustments to the ATLC and the ATLCC for the applicable month, and on a cumulative basis as of the applicable month;
- (h) Project Co’s estimate of the Monthly Lane Closure Adjustment Contribution;
- (i) measurement and verification of lane closures in accordance with Lane Closure Measurements and Verification Plan in Section 3.6; and
- (j) summary tables from all previous Lane Closure Analysis Reports delivered by Project Co to the City.

2.5 Following the review of the final Lane Closure Analysis Report by the City Representative, the data set out in the Lane Closure Analysis Report will be used by the City to determine the Monthly Lane Closure Adjustment Contribution.

### 3. PROCEDURES FOR DETERMINING MONTHLY LANE CLOSURE ADJUSTMENT CONTRIBUTIONS

3.1 The City shall not consider the following closures of lanes to be Lane Closures for the purposes of this Schedule 7, and such closures of lanes shall not contribute to the Monthly Lane Closure Adjustment Contribution:

(a) where an existing lane width is less than the minimum lane width requirements during construction, specified in Schedule 15-2 Part 7 Table 7-1.3, maintaining the lane as open for traffic operations at its existing width.

3.2 Project Co shall not use lane configurations that will remain after Substantial Completion to determine Lane Closures. For clarity, the lane configuration of each roadway as of Financial Close shall be the configuration used to calculate Lane Closures.

3.3 The City shall assess Project Co for the cost of Lane Closures based on the total Lane Closures that occur during Peak, Off Peak, and Night hours. All Lane Closures shall be included in the calculation of the Monthly Lane Closure Adjustment Contribution as provided in Section 5.

3.4 The ATLC shall form the benchmark for calculating the Lane Closure cost with respect to the AALC. The AALCC shall be used to calculate the Monthly Lane Closure Adjustment Contribution. The Lane Closure Target shall not be amended, altered or adjusted except by the process described in Section 4.

3.5 No later than 30 calendar days prior to the first Lane Closure, Project Co shall deliver to the City the initial Traffic and Transit Management Plan (TTMP). Following the acceptance of the initial TTMP by the City, Project Co shall submit all subsequent proposed changes to the TTMP to the City in accordance with Schedule 10 – Review Procedure. Project Co shall deliver to the City the Traffic Control Plans that address the Lane Closure(s) associated with the initial areas of the Site at which it plans to commence Works as part of the initial TTMP submission.

3.6 No later than 30 days prior to the initial Lane Closure within any Road Section, Project Co shall provide The City with a Lane Closure Measurement and Verification Plan. All subsequent Lane Closure Analysis Reports are to be based on this plan.

3.7 No later than 5 Business Days following the submission of the Lane Closure Analysis Report (or as agreed to between the Parties), Project Co and the City shall convene a review meeting (the “**Mobility Matters Review Meeting**”) to be attended by the Project Co Representative and the City Representative. At the Mobility Matters Review Meeting, Project Co shall present the Lane Closure Analysis Report to the City. The City and Project Co shall discuss the Aggregate Actual Lane Closure for the preceding period as well as review any proposed “equivalent facilities” as described in Section 1.10(c). Project Co’s measurement and verification of Lane Closure(s) shall be reviewed and confirmed by the City Representative.

3.8 Project Co shall assist the City Representative by providing information with respect to Lane Closures and access to the Lane Closure records, and by other means as may reasonably be

required to confirm the information in the Lane Closure Analysis Report. The City shall promptly give Notice to Project Co of the details of any disagreement with respect to all or any aspect of the Lane Closure Analysis Report, and the Parties shall then seek to agree to any matters in dispute. The process shall be as follows:

- (a) AALC and AALCC shall be determined at the Mobility Matters Review Meeting.
  - (b) No later than 20 Business Days following each Mobility Matters Review Meeting, or within such period as may be otherwise agreed between the City Representative and the Project Co Representative, acting reasonably:
    - (i) The City shall confirm their acceptance of all or any aspect of the Lane Closure Analysis Report; and
    - (ii) Subject to Section 4, Project Co and the City shall agree to any adjustments to the ATLC and ATLCC.
  - (c) If the City dispute Project Co's estimate of the Monthly Lane Closure Adjustment Contribution in the Lane Closure Analysis Report, the City shall, no later than 10 Business Days following receipt of the Lane Closure Analysis Report, or within such other period as may be agreed by the City Representative and Project Co, acting reasonably, submit an account to Project Co setting out their calculations and justifying the quantification of Project Co's estimate of the Monthly Lane Closure Adjustment Contribution. If either Project Co or the City wish to dispute any account presented pursuant this Section 3.8(c), they must do so by written Notice to the other Party no later than ten Business Days following receipt of such account. The City Representative and the Project Co Representative shall use reasonable efforts to resolve the dispute for an additional ten Business Days. If there is no agreement within a further 10 Business Days, then either Party may refer the matter to the Dispute Resolution Procedure.
  - (d) If neither Party objects in accordance with Section 3.8(c), or, following final determination of the disputed account in accordance with Section 3.8(c), Project Co shall use the relevant Monthly Lane Closure Adjustment Contribution to determine the Lane Closure Adjustment. The Lane Closure Adjustment shall be shown as a separate item within the invoice for the Substantial Completion Payment.
- 3.9 For the purpose of calculating the Lane Closure Adjustment, the calculation shall be completed 60 days prior to the Scheduled Substantial Completion Date (or at a later date as mutually agreed to by the City Representative and Project Co), comparing the total AALCC of each Road Section for the entire Construction Period to the total ALTCC for that same Road Section for the entire Construction Period. If, subsequent to this calculation being completed, there is a change to the Scheduled Substantial Completion Date, Project Co shall amend their Lane Closure Target (in accordance with Section 4) and the Lane Closure Adjustment. For clarity, over-performance of any one Road Section cannot be added to underperformance of any other.

#### **4. PROCESS FOR AMENDING THE AGGREGATE TARGET LANE CLOSURE AND ASSOCIATED COST**

- 4.1 In all cases, corrections to the ATLC and ATLCC must be consistent with the principles outlined in the TTMP.

- 4.2 Project Co and the City shall, acting reasonably, agree to make any adjustments to the ATLC, ATLCC, AALC and AALCC, but only in the event of changes implemented due to an amendment of the Project Agreement or a Variation that would cause Lane Closure changes. The City, at its discretion, may allow a revision to the Target Letters to reflect an agreed-upon change in the project schedule, in the absence of an amendment of the Project Agreement or a Variation.
- 4.3 The Party requesting an amendment to the ATLC in accordance with Section 4.2 shall initiate a Variation in accordance with Schedule 21 – Variation Procedure. The amended TTMP shall include a detailed analysis of the impacts to traffic and transit services, including an analysis of Lane Closure requirements. The amended TTMP shall include a recommendation regarding amendments to the ATLC. Both the City and Project Co shall agree to the amended ATLC no later than 20 Business Days following receipt of amended TTMP. If there is no agreement within a further 10 Business Day period, then either Party may refer the matter to the Dispute Resolution Procedure.

**5. CALCULATION OF MONTHLY LANE CLOSURE ADJUSTMENT CONTRIBUTION AND LANE CLOSURE ADJUSTMENT**

- 5.1 Comparing Aggregate Actual Lane Closures Costs to Aggregate Target Lane Closure Costs:
- (a) After the acceptance of the final Lane Closure Analysis Report described in Section 2 and no later than 30 Business Days before the Scheduled Substantial Completion Date, Project Co shall compare the total AALCC for each Road Section to the total ATLCC for each Road Section, and if the AALCC is more than [REDACTED]% greater than the ATLCC, for any Road Section, then Project Co shall calculate the Monthly Lane Closure Adjustment Contribution set out in Section 5.2 and deduct the amount of the Lane Closure Adjustment from the Substantial Completion Payment to be made in accordance with the Project Agreement. For clarity, the Lane Closure Adjustment deduction from the Substantial Completion Payment shall not be subject to the limitations set out in Section 55.4 of the Project Agreement.
  - (b) If the AALCC is greater than [REDACTED]% of the ATLCC for any monthly period for any Road Section, then Project Co shall submit a detailed remediation plan no later than 10 Business Days following the end of the month to explain how it will reduce the AALCC for the Road Section in subsequent period(s), such that the variance will not exceed the [REDACTED]% for the subsequent periods. Project Co shall present progress and achievements of the remediation plan at subsequent Mobility Matters Review Meeting(s).
- 5.2 The formulae to calculate the Monthly Lane Closure Adjustment Contribution are set out in this Section 5.2.
- (a) For the purposes of Section 5.2(b), in respect of each Road Section:
    - A = the AALCC for each Road Section in the relevant month
    - B = the ATLCC for each Road Section in the relevant month

- (b) In respect of any given month during the period leading up to Substantial Completion for each Road Section:
  - (i) If [REDACTED], then Monthly Lane Closure Adjustment Contribution = [REDACTED];
  - (ii) If [REDACTED], then Monthly Lane Closure Adjustment Contribution = [REDACTED];
  - (iii) If [REDACTED], then Monthly Lane Closure Adjustment Contribution = \$[REDACTED];
  - (iv) if the sum of all Monthly Lane Closure Adjustment Contributions in each month prior to Substantial Completion <\$[REDACTED], then Lane Closure Adjustment for that Road Section = \$[REDACTED]; and
  - (v) if the sum of all Monthly Lane Closure Adjustment Contributions in each month prior to Substantial Completion >\$[REDACTED], then Lane Closure Adjustment for that Road Section = the sum of all Monthly Lane Closure Adjustment Contributions in each month prior to Substantial Completion.

5.3 For the purposes of calculating the Lane Closure Adjustment in accordance with this Schedule 7, the Parties shall have regard to Sections 38.2(k) and 42.2(e) of the Project Agreement.

**6. PEAK HOUR LANE INTERRUPTIONS**

6.1 The City will assess Project Co for Peak Hour Lane Interruptions in accordance with Table 6.1 for the following non-performance measures per lane that is not open.

**Table 6.1**

<b>ROAD CLASSIFICATION* INCLUDING TRANSIT ROUTES AND LANES</b>	Initial value to be assessed if lane is not open as required	Additional value to be assessed at the end of each additional 10 minute period that the lane is not open.
Federal Roadways	\$[REDACTED]	\$[REDACTED]
Federal Roadways with Transit	\$[REDACTED]	\$[REDACTED]
Carleton University Roadways	\$[REDACTED]	\$[REDACTED]
Carleton University Roadways with Transit	\$[REDACTED]	\$[REDACTED]
Arterial	\$[REDACTED]	\$[REDACTED]
Arterial with Transit	\$[REDACTED]	\$[REDACTED]
Major Collector	\$[REDACTED]	\$[REDACTED]
Major Collector with Transit	\$[REDACTED]	\$[REDACTED]
Collector	\$[REDACTED]	\$[REDACTED]
Collector with Transit	\$[REDACTED]	\$[REDACTED]
Transit Only Lane	\$[REDACTED]	\$[REDACTED]

\* See the following link for City Road Classifications: <http://ottawa.ca/en/city-hall/planning-and-development/official-plan-and-master-plans/official-plan/volume-1-official-11>

6.2 Any time assessed in the cost associated with Peak Hour Lane Interruptions will not be included in calculations of Lane Closure Adjustments.

6.3 The City shall assess Project Co for the cost of Peak Hour Lane Interruptions. All Peak Hour Lane Interruptions shall be formulated into a Monthly Peak Hour Lane Interruption Report to be submitted by Project Co with the Lane Closure Analysis Report.

6.4 Project Co shall calculate the cost of Peak Hour Lane Interruptions and the City shall deduct this amount from the next Construction Period Payment or Substantial Completion Payment, as applicable, following the most recent Monthly Peak Hour Lane Interruption Report in accordance with Schedule 20 – Construction Period Payments.

**7. APPLICATION**

7.1 The Lane Closure provisions of this Schedule 7 will no longer be in effect once Substantial Completion has been achieved.

APPENDIX A

LANE CLOSURE REPORT SUBMITTAL REQUIREMENTS

Total Lane Closure Summary	Lane Closure Unit Rate	Lane Closure Target		Actual Lane Closures		Percent Variance between columns v and iii of this table	Monthly Lane Closure Adjustment Contribution
	Unit Rate based on roadway classification and time of day	Number of Target Closures	Cost of Lane Closure for monthly period (calculated based on number of closures multiplied by Unit Price Rate, multiplied by number of hours)	Usage	Cost of Lane Closures for monthly period (calculated based on number of closures multiplied by Unit Price Rate, multiplied by number of hours)		
Column reference	i	ii	iii	iv	v	vi	vii
Road Section 1 Peak							
Road Section 1 Off Peak							
Road Section 1 Night							
<i>Sub-total: Road Section 1</i>							
Road Section 2 Peak							
Road Section 2 Off Peak							
Road Section 2 Night							
<i>Subtotal: Road</i>							

<i>Section 2</i>							
Road Section 3 Peak							
Road Section 3 Off Peak							
Road Section 3 Night							
<i>Subtotal:-Road Section 3</i>							
Road Section 4 Peak							
Road Section 4 Off Peak							
Road Section 4 Night							
<i>Subtotal: Road Section 4</i>							
Road Section 5 Peak							
Road Section 5 Off Peak							
Road Section 5 Night							
<i>Subtotal: Road Section 5</i>							
Road Section 6 Peak							
Road Section 6 Off Peak							
Road Section 6 Night							
<i>Subtotal: Road</i>							

<i>Section 6</i>							
Road Section 7 Peak							
Road Section 7 Off Peak							
Road Section 7 Night							
<i>Subtotal: Road Section 7</i>							
Road Section 8 Peak							
Road Section 8 Off Peak							
Road Section 8 Night							
<i>Subtotal: Road Section 8</i>							
Road Section 9 Peak							
Road Section 9 Off Peak							
Road Section 9 Night							
<i>Subtotal: Road Section 9</i>							
<b>Substantial Completion Weekday Peak</b>							
<b>Substantial Completion Weekday Off Peak</b>							

<b>Substantial Completion Night/Weekend</b>							
<b><i>Total: Substantial Completion</i></b>							

**APPENDIX B**

**UNIT RATES FOR EACH LANE CLOSURE, LEFT TURN LANE CLOSURE AND RIGHT TURN LANE CLOSURE**

**1. UNIT RATE PRICES FOR LANE CLOSURES (Price per Hour per Block)**

	Unit Rates (\$)		
	Peak *	Off Peak **	Night ***
Arterial			
Major Collector / Carleton University Roadways			
Collector / Federal Roadways (Ottawa Internation al Airport) / Local Roadways			

\* As defined in Section 1.11

\*\* As defined in Section 1.11

\*\*\* As defined in Section 1.11

**UNIT RATES FOR EACH LANE CLOSURE, LEFT TURN LANE CLOSURE AND RIGHT TURN LANE CLOSURE**

## APPENDIX C

## LANE CLOSURE COSTING BLOCK DELINEATION ALONG CITY, FEDERAL AND CARLETON UNIVERSITY ROADWAYS

ROAD SECTION	BLOCK	Roadway Classification	BLOCK DELINEATION
Road Section 1 – Leitrim Road-Albion Road to Bowesville Road	1-A	Arterial	Albion Road to Gilligan Road
	1-B	Arterial	Gilligan Road to Bowesville Road
Road Section 2 – Lester Road –Albion Road to Alert Road	2-A	Arterial	Albion Road to Alert Road
Road Section 3 – Hunt Club Road – Mac Street to McCarthy Road	3-A	Arterial	Mac Street to Transitway
	3-B	Arterial	Transitway to Airport Parkway Ramps east of Airport Parkway
	3-C	Arterial	Airport Parkway Ramps east of Airport Parkway to Airport Parkway Ramps west of Airport Parkway
	3-D	Arterial	Airport Parkway Ramps west of Airport Parkway to McCarthy Road
Road Section 4 – Uplands Drive – Breadner Blvd to Airport Parkway	4-A	Collector	Breadner Blvd to north road entrance to EY Centre
	4-B	Collector	North road entrance to EY Centre to Research Road
	4-C	Arterial	Research Road to Airport Parkway Off Ramp
	4-D	Arterial	Airport Parkway Off Ramp to Alert Road
Road Section 5 – Airport Parkway – Hunt Club Road to Lester Road/Uplands Drive	5-A	Arterial	Hunt Club Road to Lester Road/Uplands Drive
Road Section 6 – Earl Armstrong Road – Bowesville Road to High Road	6-A	Arterial	Limebank Road to Bowesville Road
	6-B	Local	Bowesville Road to High Road
Road Section 7 – Bowesville Road – Leitrim Road to Ficko Crescent	7-A	Collector	Leitrim Road to Earl Armstrong Road
	7-B	Local	Earl Armstrong Road to Ficko Crescent
Roadway Section 8- Carleton University Roadways	8-A	Major Collector	University Drive North to Library Road
Campus Avenue – University Drive N to University Drive South	8-B	Major Collector	Library Road to University Drive West

<b>ROAD SECTION</b>	<b>BLOCK</b>	<b>Roadway Classification</b>	<b>BLOCK DELINEATION</b>
	8-C	Major Collector	University Drive West to University Drive East
Road Section 9 – Federal Roadways (OIAA)	9-A	Collector	Canadair Private -Kiowa Private to Silver Star Private
9A Canadair Private –Kiowa Private to Silver Star Private	9-B	Collector	Tracker Private –Silver Star Private to Airport Parkway Private
9B Tracker Private –Silver Star Private to Airport Parkway Private	9-C	Collector	Airport Parkway Private – Tracker Private to Airport 2 Avenue
9C Airport Parkway Private – Tracker Private to Airport 2 Avenue			

**APPENDIX D**  
**LANE CLOSURE TARGET LETTER**

[Attached]

March 20, 2019

Attention: [REDACTED]  
Norton Rose Fulbright Canada LLP  
45 O'Connor Street, Suite 1500  
Ottawa, ON  
K1P 1A4

Canada

Re: Trillium Line Extension Project - Lane Closure Target Letter

Dear Sir/Madam:

As per the requirements of Schedule 3, Part 1, TransitNEXT is pleased to provide this Lane Closure Target Letter as part of our technical and financial submission for the Trillium Line Extension Project (the Project). This letter adheres to the requirements of Schedule 3, Part 1 of this RFP.

**Primary Traffic and Transit Management Plan (TTMP) Features and Construction Management Plans**

We have explored construction staging options that will minimize lane closures, traffic impacts, and associated costs by adopting the following approaches. We will:

- Design structural elements as far from traffic as practical
- Use construction methodologies that allow the shortest occupancy of traffic lanes
- Schedule just-in-time material deliveries during off-peak hours when feasible
- Schedule major-impact construction on weekends or during off-peak hours
- Maximize progress during shutdown periods for trains and airport roads
- Provide detours where possible

By designing all bridge structures as rail-over-road, construction interference will be minimized compared to the road over rail method. This will simplify the required traffic control requirements, lowering the impact on traffic, and consequently reducing the number of lane closures required to complete the project. This also de-risks the project with respect to potential delays and safety hazards.

The traffic impact zones in this project are mostly localized to structure sites on the alignment of the proposed track extension. Because of the physical separation between sites, there will be no traffic interference between adjacent sites; hence, individual sites should have their own TTMPs. Based on our proposed construction staging approach, the individual TTMP sites are listed below:

- Rail-over-road structure at Transitway for the Ellwood Diamond grade separation
- Hunt Club Road rail-over-road and MUP bridge structures
- Lester Road rail-over-road and MUP bridge structures
- Leitrim Road rail-over-road and MUP bridge structures
- Earl Armstrong Road rail-over-road and MUP bridge structures and Earl Armstrong/Bowesville Road intersection reconfiguration
- Bowesville Road rail-over-road bridge structure
- Uplands Road rail-over-road bridge structure
- Airport Road rail-over-road bridge structure
- Airport elevated guideway adjacent to Airport Station
- Limebank Road rail-over-road bridge structure

### **Target Lane Closure Estimate Process including Software and Calculations Used**

From our preliminary TTMPs of each site and stage of this Project, TransitNEXT has extracted the Total Target Lane Closures with respect to sections and prices as defined in PA Schedule 7 - Mobility Matters, and RFP Schedule 8 - Price Form. Using several macro-enabled spreadsheets with linkages to construction dates, we estimated the Aggregate Target Lane Closure Cost (ATLCC) to be \$[REDACTED]. The ATLC values estimated include closures for lanes, left turns and right turns. We will update these closures according to any change of dates in the construction schedule, enabling the monthly Aggregate Target Lane Closure summaries to be calculated.

During execution of the Project, TransitNEXT will use this same tool for lane closure tracking, allowing monthly Aggregate Actual Lane Closures (AALC) summaries and Monthly Lane Closure Adjustment Contributions to be made.

### **Variation between TTMP and Aggregate Target Lane Closure**

The Traffic Control Plans (TCPs) in each site-specific TTMP submission will depict the lane closures specific to each stage of construction on the individual site. We will also summarize these in the Lane Closure Measurement and Verification Plan as part of each site-specific TTMP submission. The ATLCs derived from these TCPs do not include the closures required for the following short duration tasks as their locations are unknown at this phase of the Project. However, the necessity for these is foreseeable and may or may not cause variation between the AALCCs and ATLCs. These activities may include:

- Additional site investigations
- Closed-circuit television installation as required by the City for monitoring a construction site
- Deficiency rectification
- Emergency safety mitigations
- Changes in construction schedule
- Any work delay caused by third parties not affiliated with TransitNEXT

Sincerely,

TransitNEXT

**SCHEDULE 8**

**[Intentionally Deleted]**

**SCHEDULE 9**

**KEY INDIVIDUALS**

Project Co may propose multiple Key Individuals where multiple Key Individuals are allowed, as set out in this Schedule 9. Where multiple Key Individuals are allowed, Project Co shall identify the lead for each position. The lead for that position would be responsible for all functions of each Key Individual listed for that position. The functions listed below for each Key Individual position are not intended to be an exhaustive list of the functions expected to be performed by each Key Individual position.

**A. Key Individuals – Works**

<b>Project Co Party</b>	<b>Position</b>	<b>Function / Responsibility</b>	<b>Qualifications</b>	<b>Name and Contact Information</b>	<b>Liquidated Damages Amount</b>
Project Co	Project Co Representative	Project Co Representative shall have full authority to act on behalf of Project Co, and shall be responsible for overall authority and leadership of Project Co, and all Project Co parties, in accordance with the Project Agreement.	The Project Co Representative shall have a minimum of 10 years' experience. This shall include executive and P3 experience.  *Project Co Representative	[REDACTED]	- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement - [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement
Construction Contractor	Design Build Director	The Design Build Director shall be responsible for ensuring that all activities with respect to the Works are fully integrated with each other.	The Design Build Director shall have a minimum of 15 years' experience. This shall include design, construction, and P3 or Design-Build experience on projects of similar scope and complexity.	[REDACTED]	- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement - [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement

Project Co Party	Position	Function / Responsibility	Qualifications	Name and Contact Information	Liquidated Damages Amount
Construction Contractor	Design Manager	<p>The Design Manager shall be responsible for:</p> <ul style="list-style-type: none"> <li>(i) coordinating all designs produced by the Design Team;</li> <li>(ii) ensuring the schedule for Design Development Submittals is reflected in each update of the Works Schedule;</li> <li>(iii) coordinating with the City Representative, or its designate, to prioritize the review of each of the Works Submittals, if necessary; and</li> <li>(iv) ensuring obligations set out in Schedule 10 – Review Procedure are fulfilled for each Works Submittal.</li> </ul>	<p>The Design Manager shall be a Professional Engineer with a minimum 15 years of design experience. This should include Design Build or P3 experience on rail projects of similar scope and complexity.</p> <p>*Design Manager</p>	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>

Project Co Party	Position	Function / Responsibility	Qualifications	Name and Contact Information	Liquidated Damages Amount
Construction Contractor	Systems Integration Manager	The Systems Integration Manager shall have the responsibility for all activities as outlined in Article 11 of Part 1 of Schedule 15-2 of the Output Specifications and Schedule 14 Testing and Commissioning.	<p>The Systems Integration Manager shall have a degree in engineering from a recognized university and a minimum of 15 years' experience in systems design, requirements traceability, interface capture and management, integration management plan development, systems test plan and procedure development, test program management and systems commissioning.</p> <p>Experience managing and coordinating systems integration activities.</p> <p>*System Integration</p>	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>
Construction Contractor	Utility Work Manager	The Utility Work Manager shall be responsible for all activities required to fulfill Project Co's obligations as set out in Article 8 to Part 2 of Schedule 15-2 of the Output Specifications and will act as a single point of contact on all utility related matters.	<p>The Utility Work Manager shall have a minimum of 10 years' experience in Utility Works on rail projects.</p> <p>*Utility Coordination</p>	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>

Project Co Party	Position	Function / Responsibility	Qualifications	Name and Contact Information	Liquidated Damages Amount
Construction Contractor	Design Architect	The Design Architect shall have the qualifications and responsibilities as set out in Schedule 15-2, Part 4	<p>The Design Architect shall be a licensed Architect and have a minimum of 15 years' experience designing transit projects of similar scope and complexity</p> <p>*Architecture</p>	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>
Construction Contractor	Environmental Manager	The Environmental Manager shall have the responsibilities set out in Schedule 17 – Environmental Obligations.	<p>The Environmental Manager shall have a relevant Sciences degree from a recognized university and a minimum of 15 years' experience including environmental management on projects of similar scope and complexity.</p> <p>The Environmental Manager shall have successfully completed a recognized ISO 14001 Lead Auditor Course.</p>	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>

Project Co Party	Position	Function / Responsibility	Qualifications	Name and Contact Information	Liquidated Damages Amount
Construction Contractor	Director of Communications and Stakeholder Engagement	The Director of Communications and Stakeholder Engagement shall be responsible for all activities required to fulfill Project Co’s obligations as set out in Schedule 18 – Communication and Stakeholder Engagement Obligations.	<p>The Director of Communications and Stakeholder Engagement shall have a degree from a recognized university and or college in communications, media relations or other relevant speciality, with a minimum of 10 years’ experience leading communications and stakeholder engagement on transit or transportation construction projects of similar scope and complexity, and is bilingual in Canada’s two official languages (English and French).</p> <p>*Stakeholder Communications and Public Engagement</p>	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>

Project Co Party	Position	Function / Responsibility	Qualifications	Name and Contact Information	Liquidated Damages Amount
Construction Contractor	Construction Manager	The Construction Manager shall be responsible for all Construction Activities and compliance of Construction Activities with the Project Agreement.	<p>The Construction Manager shall have a degree from a recognized university or technical college in engineering, management, or other relevant specialty, with a minimum of 15 years of heavy civil transit orientated construction experience on projects of similar scope and complexity.</p> <p>*Construction Manager</p>	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>
ProjectCo	IMS Director	The IMS Director shall have the responsibilities set out in Schedule 11 – Integrated Management System.	The IMS Director shall be a certified QMS 2000 series Auditor, or at a minimum will have successfully completed a recognized ISO 9001, 14001, or OHSAS 18001 Lead Auditor Course and have at least 15 years of experience including IMS/Quality Management experience on projects of similar scope, and complexity.	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>

Project Co Party	Position	Function / Responsibility	Qualifications	Name and Contact Information	Liquidated Damages Amount
Construction Contractor	Maintenance Director	The Maintenance Director shall have the responsibilities set out in Part 1 of Schedule 15-3 of the Output Specifications.	The Maintenance Director shall have a degree from a recognized university or technical college and have a minimum of 15 years' experience in the maintenance of vehicles, systems and/or infrastructure on projects of similar scope and complexity.  *Maintenance Director	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>
Construction Contractor	Safety and Security Certification Manager	The Safety and Security Certification Manager shall have the responsibilities set out in Part 1, Article 7 of Schedule 15-2 of the Output Specifications.	The Safety and Security Certification Manager shall have a minimum of 15 years' experience in the development and implementation of an SSCP.	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>
Construction Contractor	Project Co Testing and Commissioning Coordinator	The Testing and Commissioning Coordinator shall have the responsibilities set out in Schedule 14 – Testing and Commissioning.	The Testing & Commissioning Coordinator shall have a minimum of 10 years' experience in the management and oversight of the testing and commissioning of System Infrastructure of similar scope and complexity.	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>

Project Co Party	Position	Function / Responsibility	Qualifications	Name and Contact Information	Liquidated Damages Amount
Project Co	OHS Manager	The OHS Manager shall have the responsibilities set out in Schedule 11.	The OHS Manager shall be a Canadian Registered Safety Professional (CRSP) having successfully completed the courses required under the COR program and OHSAS 18001 Lead Auditor course with a minimum of 10 years' experience in the development, implementation, and audit of an IMS-OHS for projects of similar scope and complexity.  *Health and Safety	[REDACTED]	- [REDACTED] pursuant to Section 10.4 (a) of the Project Agreement - [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement

**B. Key Individuals – Maintenance Period**

Project Co Party	Position	Function / Responsibility	Qualifications	Name and Contact Information	Liquidated Damages Amount
Project Co	Project Co Representative	Project Co Representative shall have full authority to act on behalf of Project Co, and shall be responsible for overall authority and leadership of Project Co, and all Project Co parties, in accordance with the Project Agreement.	The Project Co Representative shall have a minimum of 10 years' experience. This shall include executive and P3 experience.  *Project Co Representative	[REDACTED]	- [REDACTED] pursuant to Section 10.4(b) of the Project Agreement - [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement

Project Co Party	Position	Function / Responsibility	Qualifications	Name and Contact Information	Liquidated Damages Amount
Project Co	IMS Director	The IMS Director shall have the responsibilities set out in Schedule 11 – Integrated Management System.	The IMS Director shall be a certified QMS 2000 series Auditor, or at a minimum will have successfully completed a recognized ISO 9001, 14001, or OHSAS 18001 Lead Auditor Course and have at least 15 years of experience including IMS/Quality Management experience on projects of similar scope, and complexity.	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4(b) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>
Maintenance and Rehabilitation Contractor	Maintenance Director	The Maintenance Director shall have the responsibilities set out in Part 1 of Schedule 15-3 of the Output Specifications.	<p>The Maintenance Director shall have a degree from a recognized university or technical college and have a minimum of 15 years’ experience in the maintenance of vehicles, systems and/or infrastructure on projects of similar scope and complexity.</p> <p>*Maintenance Director</p>	[REDACTED]	<ul style="list-style-type: none"> <li>- [REDACTED] pursuant to Section 10.4(b) of the Project Agreement</li> <li>- [REDACTED] per day, pursuant to Section 10.4 (c) and 10.4(d) of the Project Agreement</li> </ul>

\* Notes a role to be filled by the same Key Individual qualified for such role as part of the RFQ process. If, given the required qualifications indicated herein, the Proponent determines that any Key Individual qualified for such role as part of the RFQ process does not meet the required qualifications for the particular role, pursuant to Section 3.6(3) of the RFP, any changes in Identified Proponent Parties from the RFQ must be made no later than the deadline set out in the RFP Timetable.

**SCHEDULE 10**

**REVIEW PROCEDURE**

**PART A – DESIGN AND CONSTRUCTION REQUIREMENTS**

**ARTICLE 1 WORKS SUBMITTALS**

- 1.1. The provisions of Part A of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by the Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by the City in accordance with the Review Procedure prior to Substantial Completion, or after Substantial Completion in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “Works Submittal” or “Works Submittals” as applicable in Part A of this Schedule 10).
- 1.2. For clarity, the provisions of Part A of this Schedule 10, including any deadlines for submission or review set out herein, shall not apply to any processing or review of any Permits, Licences, Approvals and Agreements.
- 1.3. Subject to Article 1.2, if the City fails to meet the timelines set out in this Schedule 10 with respect to its review of any Submittals, such failure shall be deemed to be a breach by the City to comply with the timelines set out in this Schedule 10.
- 1.4. In general, Works Submittals shall consist of the following. Specific requirements for each of these Work Submittals are detailed further in Appendix A.
  - (a) Design Development Submittals:
    - (i) Basis of design reports

Prior to the preparation of each Pre-Final Design Development Submission, Project Co shall develop a basis of design report for each discipline, based on the PA and PSOS project requirements. The basis of design report shall describe the technical approach planned for the project as well as the technical requirements, security mitigation and measures to be employed, design codes and parameters to be used.
    - (ii) Pre-Final Design Development (PFDD), which is the stage of design development where the design details of the relevant Works Submittal are established and drawings and specifications for construction have been developed, but are not yet fully finalized.
    - (iii) Final Design Development (FDD), which is the stage of design development where the design details of the relevant Works Submittal are finalised and the construction drawings and construction specifications for the designed element

are also finalized.

- (b) Construction Document Submittals;
  - (c) Other reports, studies, matrices and plans listed in this Schedule 10 and in Appendix A to this Schedule 10;
  - (d) Other reports, studies, matrices and plans listed in the relevant sections of the Project Agreement; and
  - (e) Works Schedules, in accordance with Schedule 12 – Works Scheduling Requirements and as per Article 3.13.
- 1.5. Project Co shall be responsible for determining any and all necessary Works Submittals, as specified in the relevant sections of the Project Agreement.
- 1.6. Other reports, studies and plans shall be submitted as follows:
- (a) Project Co shall be responsible for determining the timing of the preparation of reports, studies and plans required in the preparation of the PFDD, FDD and Construction Document Submittals, unless timing of these reports, studies and plans are identified in this Schedule 10 or in other relevant sections of the Project Agreement. Project Co shall include the timing and submission sequence of all reports, studies and plans which will inform the Design Development Submittals in the schedule of Works Submittals pursuant to Section 20.4(b)(v) of the Project Agreement. Project Co shall prepare a minimum of two hard copies and one electronic upload of submissions of reports, studies, matrices and plans for review by the City as follows:
    - (i) Draft format; and,
    - (ii) Final format (signed and sealed).
  - (b) Project Co shall be responsible for preparing and submitting additional updated submissions of reports, studies and plans, if the validity of such is altered due to design changes or if more frequent submissions are identified in this Schedule 10 or in other relevant sections of the Project Agreement.
- 1.7. [Intentionally Deleted]
- 1.8. Requirement for a Compliance Verification & Validation Matrix:
- (a) Project Co. shall use the Requirements Management tool to develop reports on compliance with the Output Specifications and other requirements (e.g. new rail vehicle interface) in the form of Compliance Verification & Validation Matrix. The Compliance Verification & Validation Matrix shall provide line by line reporting of all applicable requirements and shall provide full traceability between requirements and compliance demonstration including preliminary and final design references, quality assurance & control, testing & commissioning (including but not limited to FAT, PICO, SAT, SIT, and system wide testing); and
  - (b) Project Co shall submit the Compliance Verification & Validation Matrix in accordance with this

Schedule 10 a as part of the Basis for Design submittal, at the Pre-Final Design Development stage, Final Design Development stage, and prior to system wide testing.

(c) [Intentionally Deleted]

1.9. Design review workshops

- (a) Project Co shall schedule and coordinate design review workshops in advance of issuing Pre-Final Design Development Submittals;
- (b) The Project Co Representative shall arrange the design review workshops in consultation with the City Representative;
- (c) The Parties shall cooperate to develop a reasonable schedule for the design review workshops and shall incorporate such schedule into the Current PBS;
- (d) Project Co shall circulate to the City Representative an agenda for each of the design review workshops no later than 5 Business Days prior to the relevant design review workshop;
- (e) The design review workshops shall be held in person in the City of Ottawa, Ontario, except where otherwise agreed by the Parties, acting reasonably; and
- (f) In advance of a design review workshop, Project Co may submit to the City Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform the City on the development of New City Infrastructure design and provide an opportunity for dialog on compliance with the requirements of the Project Agreement. For greater certainty, interim submissions shall be informal and shall not be reviewed in accordance with Schedule 10 - Review Procedure.

**ARTICLE 2 SCHEDULE FOR WORKS SUBMITTALS**

- 2.1. Project Co shall schedule the Review Procedure Activities, including the submission dates for all Works Submittals and the City review period in accordance with Part A of this Schedule 10.
- 2.2. The Works Schedule and any amendment to the Works Schedule shall allow:
  - (a) A period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for the City's review of and response to each Works Submittal for all Works; and
  - (b) A period of 20 Business Days (or such longer period as the Parties may agree) from the date of receipt for the City's review of and response to each Works Submittal containing elements of the Works to be constructed within or adjacent to MTO and NCC Lands. Refer to the Lands Table in Schedule 33 – Lands for the extent of these Lands.

This period of time may be subject to modification as agreed upon with the City.

- 2.3. Project Co shall submit all Works Submittals to the City no later than the dates identified in the Current PBS, as defined in Schedule 12 – Works Scheduling Requirements. The City Representative shall review and respond to each Works Submittal in accordance with the review time periods specified in Article 2.2 of this Schedule 10 – Review Procedure, or as otherwise agreed to between the Parties.
- 2.4. If, at any time, any or all of:
  - (a) Revised PBS is under review by the City;
  - (b) Project Co submits a volume of Works Submittals not contemplated by the Current PBS; or
  - (c) a Works Submittal was, or Works Submittals were, received for review later than indicated in the Current PBS, such that the City Representative cannot review the Works Submittal or Works Submittals within the time permitted in the Current PBS,

then the City Representative shall, within five Business Days of receipt of such Works Submittal or Works Submittals, provide Project Co with a reasonable estimate of the time necessary for processing such Works Submittal or Works Submittals which estimate Project Co shall take into account for the purposes of Schedule 12 – Works Scheduling Requirements, provided that an extension shall not be greater than 5 Business Days.

### **ARTICLE 3 GENERAL REQUIREMENTS FOR WORKS SUBMITTALS**

- 3.1. Unless otherwise specified by the City Representative, Project Co shall issue all Works Submittals to the City in the format described in Appendix A to this Schedule 10, and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2. Project Co shall, at its own cost and risk, compile and maintain a Review Procedure Activities Register, to be uploaded to the Electronic Data Management System (EDMS) as detailed in Article 4.10 and Appendix A, to track the status of each Works Submittal through every stage of preparation, submission, and review by the City, and approval by the applicable third party, including for clarity, approval from the City. Project Co shall submit documentation on the proposed design, functionality, and usage of the Review Procedure Activities Register to the City Representative in accordance with Schedule 10 – Review Procedure no later than Financial Close.
- 3.3. The Review Procedure Activities Register shall:
  - (a) be updated on a daily basis by Project Co and be accessible by the City, any other entity as requested by the City and Project Co, in real time, through a web-based project management system, unless otherwise permitted by the City;
  - (b) be in place and operational no later than 30 days after Financial Close; and
  - (c) include identification of each of the following:

- (i) the submittal date and contents of all Works Submittals;
  - (ii) the date of receipt and content of all returned Works Submittals;
  - (iii) status of comments on all Work Submittals in accordance with Article 4.1 of this Schedule 10;
  - (iv) vulnerability or security breaches
  - (v) review and update City's SSCP and SSeCP to be submitted 30 days after Financial Close; and
  - (vi) tracking ID's (in a format reasonably acceptable to the City) supporting the requirements of Article 3.7; and
  - (vii) include a tracking log to monitor the resolution of comments that arise during the Review Procedure, as per Article 4.10 of this Schedule 10.
- 3.4. All Works Submittals shall be in English.
- 3.5. All Works Submittals required by the Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations, registered in the Province of Ontario (including, where applicable, by registered professional engineers, professional geo-scientists, architects or landscape architects) shall be so signed and sealed.
- 3.6. All Works Submittals shall:
- (a) include copies of all documents to be reviewed;
  - (b) be uploaded to the EDMS and are to include an electronic file-naming convention acceptable to the City; and
  - (c) shall clearly identify the purpose of the Works Submittal, Project Co's proposed course of action relating to the Works Submittal and the Project Operations that are the subject of the Works Submittal.
- 3.7. All Works Submittals shall, where applicable, refer to and be in accordance with the relevant provisions of the Output Specifications, any other applicable Schedule to the Project Agreement and to any Design Data that has previously been subject to review.
- 3.8. Each Works Submittal shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include:
- (a) a summary table which lists all revisions or changes from previous Works Submittals; and
  - (b) a list of all attached Works Submittals and for each Works Submittal;

- (i) identification of whether the Works Submittal contains System Infrastructure, New Municipal Infrastructure, and elements of Works on or adjacent to MTO and NCC Lands.
  - (ii) the document number(s) or drawing number(s);
  - (iii) revision numbers (if applicable);
  - (iv) document or drawing title(s);
  - (v) name of entity that prepared the Works Submittal;
  - (vi) name and signature of the Design Manager and other Key Individual(s) responsible for content of the Works Submittal;
  - (vii) quality control documentation in accordance with Schedule 11 – Integrated Management System Requirements;
  - (viii) the Works Submittal history, including reviewer and checker initials, date and delivery information, log number of all previous submissions of that Works Submittal, Project Agreement provisions, comments from reviewers from the previous Works Submittal, all outstanding comments, and responses to addressing those comments, all submitted in a format reasonably acceptable to the City; and
  - (ix) identification of any previous Works Submittal superseded by the current Works Submittal.
- 3.9. To facilitate the City’s distribution of Works Submittals to the NCC and MTO, all Works Submittals that are to be reviewed by the NCC and MTO, shall be separated accordingly and submitted individually.
- 3.10. Each Works Submittal shall be organized into relevant sections. Each Work Submittal shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. All Works Submittals shall, without limitation, include copies of all final approvals, design reports, correspondence and calculations, in both electronic and hard copy.
- 3.11. [Intentionally Deleted]
- 3.12. Issued For Construction Works Submittals
- (a) Construction Document Submittals submitted in accordance with this Schedule 10 – Review Procedure and assigned comments “NO COMMENT” or “MINOR COMMENT” with all of the comments resolved, shall become Issued For Construction and Project Co shall stamp them as “Issued For Construction”. Works Submittals used for the construction of any part or parts of the Project prior to being entitled to proceed, as noted above, shall not be stamped as Issued For Construction.
  - (b) Project Co shall submit copies of all drawings that are Issued For Construction, together with manuals and instructions, to the City Representative and to the Independent Certifier.
  - (c) Revisions to Issued For Construction documents shall be submitted for review as

Construction Document Submittals, being stamped “Issued For Construction” upon being entitled to proceed in accordance with this Schedule 10 – Review Procedure. Issued For Construction documents are required for the certification of construction detailed in Appendix A of this Schedule 10.

**3.13. Works Schedule Re-baseline Submittals**

- (a) Project Co shall prepare Works Schedules re-baselines in accordance with Schedule 12 – Works Scheduling Requirements. Project Co shall submit the Works Schedules re-baselines for review in accordance with this Schedule 10.
- (b) All non-draft submissions shall include Project Co Representative’s dated signature on the front cover of each document.
- (c) All Works Schedules submitted to the City shall be submitted in two electronic file formats. The first format shall be in the native file format of the software used to generate and manage the Works Schedules, which shall be the exported .XER file for the latest version of Primavera Professional Project Management (PPM). The second format shall be a word-searchable high resolution colour PDF version. Upon City’s request, Project Co shall provide the details of the software and any additional software plug-ins used by Project Co, a copy of any templates, and the details for any software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable the City to replicate the Works Schedules submitted by Project Co using the native file formats provided by Project Co.
- (d) At each submission, Project Co shall provide at least two hardcopies of the PBS printed in colour in a reasonable scale and on an appropriate paper size. Project Co shall submit one .XER file used to generate the Works Schedule re-baseline and the resultant PDF.
- (e) All tabular information including numerical data or calculations shall be submitted in two electronic file formats. The first format shall be in the Microsoft Excel file format that would allow the City to review formulas and manipulate the data for the purpose of evaluation and the second format shall be a high resolution PDF version.
- (f) The filename of each of the electronic files submitted shall indicate the project name acronym, schedule type, revision number and the schedule status date in the format ‘YYYYMMDD’ - e.g. PBS-4 shall be named “TRI PBS-4 – 20180731”.
- (g) The requirements of Article 3 shall apply to all PBS Submittals.

**ARTICLE 4 COMMENTS**

- 4.1. The City Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Article 2.2. The City Representative shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following four comments:

- (a) “NO COMMENT”;
  - (b) “MINOR COMMENT”;
  - (c) “MAJOR COMMENT”; or
  - (d) “CRITICAL COMMENT”.
- 4.2. The comment “NO COMMENT” will be assigned to those Works Submittals that, in the opinion of the City Representative, generally conform to the requirements of the Project Agreement, and recognizing the degree of design development. Project Co shall comply with and implement such Works Submittals.
- 4.3. The comment “MINOR COMMENT” will be assigned to those Works Submittals that, in the opinion of the City Representative, generally conform to the requirements of the Project Agreement, recognizing the degree of design development, but in which non-material deficiencies have been found by the City Representative’s review. Project Co shall correct these Works Submittals in the submission immediately subsequent, and shall comply with and implement such Works Submittals after correction, including in accordance with the comments. If the City Representative assigns to a Works Submittal the additional comment “RE-SUBMIT”, then,
- (a) Project Co shall correct and re-submit such Works Submittal, in its entirety and at its own cost, to the City Representative no later than 20 Business Days after the comment has been provided to Project Co, or as agreed between Project Co and the City Representative, and as set out in writing.
  - (b) If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “MINOR COMMENT”, then Project Co will be required to modify the Works Submittals and Project Operations as required to ensure that the Works comply with the Output Specifications, any other applicable Schedule to the Project Agreement, and the Project Co Proposal Extracts and Project Co may be required, at the City Representative’s discretion, to resubmit the relevant Works Submittals.
  - (c) In such circumstances the City Representative shall act promptly in considering whether such deficiencies have been corrected. At the City Representative’s discretion, comments addressed as “MINOR COMMENT” that have not been addressed in the subsequent submission may be escalated to “MAJOR COMMENT” or “CRITICAL COMMENT”.
  - (d) No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.4. The comment “MAJOR COMMENT” or “CRITICAL COMMENT” will be assigned to those Works Submittals that, in the opinion of the City Representative, contain significant deficiencies or do not generally conform to the requirements of the Project Agreement, including this Schedule 10.

- (a) Project Co shall correct and re-submit these Works Submittals within 20 Business Days after the comment has been provided to Project Co, or such other time period as agreed between Project Co and the City Representative, and as set out in writing.
  - (b) The City Representative will then review such re-submitted Works Submittals and assign a comment to the corrected Works Submittal. The Works Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed.
  - (c) No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Works Submittal with a “CRITICAL COMMENT” comment will be a Proceeding At Risk Matter in accordance with Section 11.6(a) of the Project Agreement.
- 4.5. Where the City Representative issues the comment “MINOR COMMENT”, “MAJOR COMMENT” or “CRITICAL COMMENT”, the City Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of the Project Agreement that the Works Submittal fails to satisfy. Project Co shall schedule a meeting between the Project Co Representative and the City Representative to discuss the resolution of “MAJOR COMMENT” and “CRITICAL COMMENT” comments. At the City Representative’s discretion, a meeting may be requested to resolve “MINOR COMMENT” comments.
- 4.6. If, at any time after assigning any comment to a Works Submittal, the City Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of the Project Agreement, the City Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Article 5 of this Schedule that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.7. For the purpose of facilitating and expediting the review and correction of Works Submittals, the City Representative and the Project Co Representative shall meet, as may be mutually agreed, to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8. Where a Works Submittal is voluminous, the City Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by the City.
- 4.9. In lieu of returning a Works Submittal, the City Representative may notify Project Co of the comment assigned to the Works Submittal and if such comment is “MINOR COMMENT”, “MAJOR COMMENT” or “CRITICAL COMMENT”, then the notification shall contain comments in sufficient detail for Project Co to identify the correction sought.
- 4.10. Project Co shall be responsible for creating and maintaining an EDMS as defined in Appendix A, as a tracking log to monitor, as a minimum, the approval of submittals and the resolution of

comments (in a format reasonably acceptable to the City) which is to be available to the City, as described in Article 3. The EDMS will also be used as a repository for all other electronic submittal uploads and document control. The EDMS shall be in place and operational the earlier of, the date upon which the first Works Submittal is submitted or 60 days after Financial Close. The EDMS shall be deemed reasonably acceptable to the City prior to implementation.

- (a) The City accepts that there may be an occasional requirement for routine system shutdowns and/or maintenance. This maintenance shall take place when it will minimize the effect on the obligations as set out in this Project Agreement.
- 4.11. At the City Representative's discretion, Project Co may be requested to attend a meeting to discuss the resolution of any unresolved comments.

## **ARTICLE 5 DISPUTES**

- 5.1. If Project Co disputes any act of the City or the City Representative in respect of a Works Submittal under this Part A of Schedule 10, Project Co shall promptly notify the City Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The City Representative shall review the Works Submittal, the reasons and supporting documentation and within five Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the City Representative confirms the original comment, Project Co may request that the Independent Certifier resolve the Dispute and render a decision within five Business Days of such request.
- 5.2. If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Article 10.2 of Part A of Schedule 10, either Party may refer the matter for determination in accordance with Schedule 26 - Dispute Resolution Procedure.
- 5.3. Notwithstanding the provisions of Articles 5.1 and 5.2, the City Representative may direct that Project Co revise the Works Submittals in accordance with the comments of the City Representative and proceed to perform and complete the Works on the basis of such revised Works Submittals. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with this Article 5 and Schedule 26 – Dispute Resolution Procedure.

## **ARTICLE 6 EFFECT OF REVIEW**

- 6.1. Any review and comment by the City or the City Representative of any Works Submittals are for general conformity to the obligations and requirements of the Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of Project Co's obligations under and requirements of the Project Agreement, and shall not create any new or additional obligations or liabilities for the City. Without limiting the generality of the foregoing, any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities in respect of the Works under the Project Agreement or exclude or limit the City's rights in respect of the Works under the Project Agreement.

**ARTICLE 7 WORKS SUBMITTAL EXPLANATION**

- 7.1 At any time, the City Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, at no additional cost to the City, to explain to the City Representative and the City advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications or any other Schedule to the Project Agreement, as applicable. Project Co shall provide the explanation to the City Representative within five Business Days (or such longer period as the Parties may agree) from the date of receipt of the request from the City Representative.

**ARTICLE 8 REVISIONS**

- 8.1. Project Co shall ensure that each Works Submittal keeps the same unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.
- 8.2. Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing. Drawings produced during Design Development shall be exempt from the requirements in Article 8.2.
- 8.3. All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the As-built Drawings and the Record Drawings.
- 8.4. Project Co shall keep all Design Data current. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.
- 8.5. [Intentionally Deleted]

**ARTICLE 9 AUDIT BY THE CITY REPRESENTATIVE**

- 9.1. Without limiting any other right under the Project Agreement, the City Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.

- 9.2. If during an audit or at any other time it is discovered by the City or Project Co (or resolved pursuant to Article 9.3) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Project Operations to which they relate and shall advise the City Representative of all such corrections and modifications.
- 9.3. Any Dispute concerning the implementation of a Works Submittal, subject to Article 5.1, shall be referred in the first instance to the Independent Certifier for resolution.

#### **ARTICLE 10 VARIATIONS**

- 10.1. [Not used]
- 10.2. If, having received comments from the City Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within ten (10) Business Days of receipt of and before complying with the comments, provide written Notice to the City of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, the City may, at their election, issue a Variation Enquiry (which shall be dealt with in accordance with Schedule 21 - Variation Procedure) or amend their comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with, either party may proceed to resolve the matter in accordance with Article 5, including for clarity, the exercise by the City of their rights under Article 5. Subject to the foregoing sentence, any failure by Project Co to notify the City in accordance with this Article 10.2 that Project Co considers that compliance with any comments of the City Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the City Representative's comments shall be without cost to the City and without any extension of time.

#### **ARTICLE 11 GENERAL**

- 11.1. Any capitalized terms used in the appendices to this Schedule 10 that are not defined in this Schedule 10, the Project Agreement or in Schedule 1 – Definitions and Interpretation, shall have the meanings given to them in Schedule 15-1 – Technical Terms and Reference Documents.

**SCHEDULE 10**

**REVIEW PROCEDURE**

**PART B – MAINTENANCE PERIOD**

**ARTICLE 1 MAINTENANCE AND REHABILITATION SUBMITTALS**

- 1.1. The provisions of Part B of this Schedule 10 shall apply to any and all items, documents and anything else required or specified by the Project Agreement (other than the Design Development Submittals, the Construction Document Submittals and the Design Data) and the Maintenance and Rehabilitation Submittals listed in Appendix B, to be submitted to, reviewed or otherwise processed by the City in accordance with the Review Procedure in respect of the Project, after Substantial Completion, except in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “Maintenance and Rehabilitation Submittal” or “Maintenance and Rehabilitation Submittals” as applicable in Part B of this Schedule 10).
- 1.2. All Works Schedules required under Part B shall be prepared and submitted in accordance with Schedule 12 – Works Scheduling Requirements, and Schedule 15-3 – Maintenance & Rehabilitation Requirements.
- 1.3. For clarity, the provisions of Part B of this Schedule 10, including any deadlines for submission or review set out herein, shall not apply to any processing or review of any Permit, Licences, Approval or Agreements.
- 1.4. Project Co shall allow a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for the review of and response to each Maintenance and Rehabilitation Submittal.
- 1.5. Project Co shall, in scheduling Maintenance and Rehabilitation Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Maintenance and Rehabilitation Submittals, for review of the Maintenance and Rehabilitation Submittals and for Project Co to make changes to Maintenance and Rehabilitation Submittals that may be required if comments are received on the Maintenance and Rehabilitation Submittals, such review and required changes to be in accordance with Part B of this Schedule 10.
- 1.6. Requirement for a Compliance Verification & Validation Matrix:
  - (a) Project Co. shall use the Requirements Management tool to develop reports on compliance with the Output Specifications and other requirements in the form of a Maintenance & Rehabilitation Compliance Verification & Validation Matrix. The Compliance Verification & Validation Matrix shall provide line by line reporting of all PSOS requirements and shall provide full traceability between maintenance and rehabilitation requirements and compliance demonstration including preliminary and final design references (where applicable), maintenance procedures and plans, demonstration of training plans and training delivery, final design of the performance

reporting requirements including testing of the performance reporting system, and compliance with any other maintenance related deliverables; and

- (b) Project Co shall submit the Maintenance & Rehabilitation Compliance Verification & Validation Matrix in accordance with this Schedule 10 at two intervals: 6 months prior to Trial Running and 30 days prior to Trial Running.
- (c) [Intentionally Deleted].

**ARTICLE 2 GENERAL REQUIREMENTS FOR MAINTENANCE AND REHABILITATION SUBMITTALS**

- 2.1. Unless otherwise specified by the City Representative, Project Co shall issue three printed copies of all Maintenance and Rehabilitation Submittals to the City, together with an electronic copy to the EDMS in a format agreed by the Parties acting reasonably.
- 2.2. Project Co shall utilize the Review Procedure Activities Register provided in accordance with the requirements of Article 3.2 of Part A of this Schedule 10, to track the status of each Maintenance and Rehabilitation Submittal through every stage of preparation, submission, review by the City, and approval by the applicable third party, including for clarity, approval from the City. The Review Procedure Activities Register shall be maintained in respect of Maintenance and Rehabilitation Submittals at all times during the Maintenance Period and shall:
  - (a) be maintained up-to-date by Project Co and be accessible by the City, any other entity as requested by the City and Project Co in real time, through a web-based project management system, unless otherwise permitted by the City;
  - (b) include identification of the following:
    - (i) the submittal date and contents of all Maintenance and Rehabilitation Submittals;
    - (ii) the date of receipt and content of all returned Maintenance and Rehabilitation Submittals;
    - (iii) the status of comments on all Maintenance and Rehabilitation Submittals in accordance with Article 3.1 of this Part B of Schedule 10; and
    - (iv) tracking ID's (in a format reasonably acceptable to the City) supporting the requirements of Article 2.7.
- 2.3. All Maintenance and Rehabilitation Submittals shall be in English.
- 2.4. All Maintenance and Rehabilitation Submittals required by the Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations registered in the Province of Ontario (including, where applicable, by registered professional engineers, geoscientists, architects or landscape architects) shall, where applicable, be so signed and sealed.
- 2.5. All Maintenance and Rehabilitation Submittals shall:
  - (a) include copies of all documents to be reviewed;

- (b) include an electronic file-naming convention acceptable to the City, acting reasonably; and
  - (c) clearly identify the purpose of the Maintenance and Rehabilitation Submittal, Project Co's proposed course of action relating to the Maintenance and Rehabilitation Submittal and the Project Operations that are the subject of the Maintenance and Rehabilitation Submittal.
- 2.6. All Maintenance and Rehabilitation Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications and/or any other applicable Schedule to the Project Agreement.
- 2.7. All Maintenance and Rehabilitation Submittals shall be clearly identified as a Maintenance and Rehabilitation Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Maintenance and Rehabilitation Submittals, and for each Maintenance and Rehabilitation Submittal:
- (a) the document number(s) or drawing number(s);
  - (b) revision numbers (if applicable);
  - (c) document or drawing title(s);
  - (d) name of entity that prepared the Maintenance and Rehabilitation Submittal;
  - (e) name and signature of the Maintenance Director and other Key Individual(s) responsible for content of the Maintenance and Rehabilitation Submittal;
  - (f) Quality control documentation in accordance with Schedule 11 – Integrated Management System Requirements;
  - (g) the Maintenance and Rehabilitation Submittal history showing date and delivery information and/or log number of all previous submissions of that Maintenance and Rehabilitation Submittal as per the EDMS as detailed in 4.10 in Part A; and
  - (h) identification of any previous Maintenance and Rehabilitation Submittal superseded by the current Maintenance and Rehabilitation Submittal.
- 2.8. Each Maintenance and Rehabilitation Submittal shall be organized and shall have indexes and sectional dividers. The Maintenance and Rehabilitation Submittals shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. Submissions shall include copies of all final approvals, design reports, correspondence and calculations.

**ARTICLE 3 COMMENTS**

- 3.1. The City Representative shall review and respond to each Maintenance and Rehabilitation Submittal in accordance with the time periods specified in Article 1.4. The City Representative shall return Maintenance and Rehabilitation Submittals to Project Co and assign one of the following four comments:
- (a) “NO COMMENT”;
  - (b) “MINOR COMMENT”;
  - (c) “MAJOR COMMENT” or
  - (d) “CRITICAL COMMENT”.
- 3.2. The comment “NO COMMENT” will be assigned to those Maintenance and Rehabilitation Submittals that, in the opinion of the City Representative, conform to the requirements of the Project Agreement. Project Co shall comply with and implement such Maintenance and Rehabilitation Submittals.
- 3.3. For Maintenance and Rehabilitation Submittals that require approval from third parties, including, for clarity, approval from the City, the City Representative may not issue a “NO COMMENT” or a “MINOR COMMENT” comment if the applicable third party has not approved those Maintenance and Rehabilitation Submittals.
- 3.4. The comment “MINOR COMMENT” will be assigned to those Maintenance and Rehabilitation Submittals that, in the opinion of the City Representative, generally conform to the requirements of the Project Agreement, but in which non-material deficiencies have been found by the City Representative’s review. Project Co shall correct these Maintenance and Rehabilitation Submittals and shall comply with and implement such Maintenance and Rehabilitation Submittals after correction, including in accordance with the comments. If the City Representative assigns to a Maintenance and Rehabilitation Submittal the additional comment “RE-SUBMIT”, then,
- (a) Project Co shall correct and re-submit such Maintenance and Rehabilitation Submittal, in its entirety and at its own cost to the City Representative no later than 20 Business Days after the comment has been provided to Project Co, or such other time period as determined by the City Representative, acting in its sole discretion and as set out in writing.
  - (b) If at any time it is discovered that Project Co has not corrected the deficiencies on Maintenance and Rehabilitation Submittals stamped “MINOR COMMENT”, then Project Co will be required to modify the Maintenance and Rehabilitation Submittals and Project Operations as required to ensure that the Project Operations comply with the Output Specifications and Project Co may be required, at the City Representative’s discretion, to resubmit relevant Maintenance and Rehabilitation Submittals.
  - (c) In such circumstances, the City Representative shall act promptly in considering whether such deficiencies have been corrected. At the City Representative’s discretion,

comments addressed as “MINOR COMMENT” that have not been addressed in the subsequent submission may be escalated to “MAJOR COMMENT” or “CRITICAL COMMENT”.

- (d) No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 3.5. The comment “MAJOR COMMENT” or “CRITICAL COMMENT” will be assigned to those Maintenance and Rehabilitation Submittals that, in the opinion of the City Representative, contain significant deficiencies or do not generally conform to the requirements of the Project Agreement, including this Schedule 10.
- (a) Project Co shall correct and re-submit these Maintenance and Rehabilitation Submittals within 15 Business Days after the comment has been provided to Project Co, or such other time period, as determined by the City Representative, acting in its sole discretion and as set out in writing.
  - (b) The City Representative will then review such re-submitted Maintenance and Rehabilitation Submittals and assign a comment to the corrected Maintenance and Rehabilitation Submittal. The Maintenance and Rehabilitation Submittals shall be corrected, revised and resubmitted, in their entirety, as often as may be required to obtain a comment that permits Project Co to proceed.
  - (c) No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Maintenance and Rehabilitation Submittal with a “CRITICAL COMMENT” comment shall be escalated to the Maintenance Committee.
- 3.6. Where the City Representative issues the comment “MINOR COMMENT”, “MAJOR COMMENT” or “CRITICAL COMMENT”, the City Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of the Project Agreement that the Maintenance and Rehabilitation Submittal fails to satisfy, and, if requested by the Project Co Representative, the City Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 3.7. If, at any time after assigning any comment to a Maintenance and Rehabilitation Submittal, the City Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of the Project Agreement, the City Representative may revise the comment assigned to any Maintenance and Rehabilitation Submittal. If the Parties agree or it is determined in accordance with Article 3.11 of this Schedule 10 that the revised comment is correct, Project Co shall make all such corrections to the Maintenance and Rehabilitation Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 3.8. For the purpose of facilitating and expediting the review and correction of Maintenance and Rehabilitation Submittals, the City Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Maintenance and Rehabilitation Submittals and any comments thereon.

- 3.9. Where a Maintenance and Rehabilitation Submittal is voluminous, the City Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Maintenance and Rehabilitation Submittal with the appropriate comment, if any, and provide Project Co with the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by the City.
- 3.10. In lieu of returning a Maintenance and Rehabilitation Submittal, the City Representative may notify Project Co of the comment assigned to the Maintenance and Rehabilitation Submittal and if such comment is “MINOR COMMENT”, “MAJOR COMMENT” or “CRITICAL COMMENT”, then the notification shall contain comments in sufficient detail for Project Co to identify the correction sought.
- 3.11. Project Co shall be responsible for creating and maintaining a tracking log to monitor the resolution of comments (in a format reasonably acceptable to the City) which is to be available to the City, as described in Article 2.
- 3.12. At the City Representative’s discretion, Project Co may be requested to attend a meeting to discuss the resolution of any unresolved comments.

#### **ARTICLE 4 DISPUTES**

- 4.1. If Project Co disputes any act of the City or the City Representative in respect of a Maintenance and Rehabilitation Submittal under this Part B, Project Co shall promptly notify the City Representative of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The City Representative shall review the Maintenance and Rehabilitation Submittal, the reasons and supporting documentation and within five (5) Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment.
- 4.2. If after such review by the City Representative Project Co disputes the comment on a Maintenance and Rehabilitation Submittal, subject to Article 9.1, Project Co may refer the matter for determination in accordance with Schedule 26 - Dispute Resolution Procedure.

#### **ARTICLE 5 EFFECT OF REVIEW**

- 5.1. Any review and comment by the City or the City Representative of any Maintenance and Rehabilitation Submittals are for general conformity to the obligations and requirements of the Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of the Project Agreement, and shall not create any new or additional obligations or liabilities for the City. Without limiting the generality of the foregoing any and all errors or omissions in Maintenance and Rehabilitation Submittals or of any review and comment shall not exclude or limit Project Co.’s obligations or liabilities under the Project Agreement in respect of matters related to the Maintenance and Rehabilitation Submittal or exclude or limit the City’s

rights under the Project Agreement in respect of matters related to the Maintenance and Rehabilitation Submittal.

**ARTICLE 6 MAINTENANCE AND REHABILITATION SUBMITTAL  
EXPLANATION**

- 6.1 At any time, the City Representative may, acting reasonably, require Project Co or any Project Co Parties at no additional cost to the City, to explain to the City Representative and the City' advisors the intent of Project Co.'s Maintenance and Rehabilitation Submittals, including as to its satisfaction of the Output Specifications and its impact on the Project Operations.

**ARTICLE 7 REVISIONS**

- 7.1. Project Co shall ensure that Maintenance and Rehabilitation Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Maintenance and Rehabilitation Submittal are identified by a sequential revision number. Correspondence related to such Maintenance and Rehabilitation Submittal shall reference the reference number and revision number.
- 7.2. Re-submittals shall clearly show all revisions from the previous Maintenance and Rehabilitation Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 7.3. All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Maintenance and Rehabilitation Submittal. Electronic versions of the Maintenance and Rehabilitation Submittal shall identify the persons who initialled the revisions to the printed version of the Maintenance and Rehabilitation Submittal.

**ARTICLE 8 AUDIT BY THE CITY REPRESENTATIVE**

- 8.1 Without limiting any other right under the Project Agreement, the City Representative shall have the right to audit all Maintenance and Rehabilitation Submittals, including comparing all Maintenance and Rehabilitation Submittals to previous Maintenance and Rehabilitation Submittals.
- 8.2 If during an audit or at any other time it is discovered by the City or Project Co that any Maintenance and Rehabilitation Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Maintenance and Rehabilitation Submittals and the Project Operations to which they relate and shall advise the City Representative of all such corrections and modifications.

**ARTICLE 9 VARIATIONS**

- 9.1 If, having received comments from the City Representative on any Maintenance and Rehabilitation Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written Notice to the City of the same and, if it is agreed by the Parties, or is determined pursuant to Schedule 26 - Dispute Resolution Procedure, that a Variation would arise if the comments were complied with, the City may at their election, either issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 21 - Variation Procedure or amend their comment on the Maintenance and Rehabilitation Submittal. Any failure by Project Co to notify the City in accordance with this Article 9.1 that Project Co considers compliance with any comments of the City Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the City Representative's comments shall be without cost to the City and without any extension of time.

**ARTICLE 10 GENERAL**

- 10.1 Any capitalized terms used in the appendices to this Schedule 10 – Review Procedure, that are not defined in this Schedule 10 – Review Procedure or in Schedule 1 – Definitions and Interpretation of the Project Agreement, shall have the meanings given to them in Schedule 15-1 – Technical Terms and Reference Documents.

## APPENDIX A - MINIMUM WORKS SUBMITTAL REQUIREMENTS

### ARTICLE 1 FORMAT FOR WORKS SUBMITTALS

1.1 All Works Submittals shall be submitted to the City in hardcopy and electronic format as follows:

(a) Hardcopy requirements:

- (i) three sets of all Work Submittals shall be submitted in reduced format drawings (11" x 17", fold-outs, folded to 8.5" x 11") and design briefs, included in 3-hole ring binders; and
- (ii) three sets of Works Submittals which are not drawings shall be submitted in 8.5" x 11" format, unless otherwise specified.

(b) All other Submittals not otherwise specified shall be submitted to an EDMS as detailed below. In addition to hard copies, all Works Submittals (or as otherwise agreed upon by the Parties) shall be submitted to an EDMS and in an electronic format that is deemed reasonably acceptable to the City. As a minimum, this system shall comprise the following:

- (i) a cloud-based single platform which provides an easily configurable solution;
- (ii) user group security and restricted authorization function;
- (iii) browsing by project, folder or file name with drag and drop function;
- (iv) collaboration functions with the ability to electronically approve and stamp documents;
- (v) text searchable functions for PDF and native files;
- (vi) seamless integration;
- (vii) audit trail;
- (viii) pre-defined workflow & quality management systems;
- (ix) read-only, real-time access for the City Representative and their nominated personnel;

- (x) version control and notification capability;
  - (xi) analytics and reporting function; and
  - (xii) a review function with customizable mark-up tools.
- (c) CAD drawings shall be provided in accordance with the City of Ottawa’s CADD Standards Manual; and
- (d) All Works Submittals shall be uploaded to the web based project management system, in text-searchable PDF and in their native format, simultaneously with the submission to the City.
- 1.2 All Works Submittals shall also be provided in the format set forth in Appendix A.

**ARTICLE 2 SUBMITTALS**

- 2.1. The following is a detailed list of the Works Submittals that Project Co is required to provide to the City for review and comment in accordance with this Schedule 10.
- 2.2. Additional Works Submittals may be requested by the City Representative at any time in order to understand the Works, and Project Co shall be required to provide same to the City for review in accordance with this Schedule 10. A description of the minimum content of each Work Submittal provided is set out in the following sections.
- 2.3. [Intentionally Deleted].
- 2.4. Works Submittal deliverables which are applicable to satisfying the requirements of multiple Works Submittal sections are permitted to be reused, granted they meet all the requirements of each Works Submittal section they are applied to.
- 2.5. Submission Requirements
- (a) The Works Submittal Requirements are detailed in the tables below.

**[REDACTED]**

**ATTACHMENT 1**

**Sample Design Certificates**

Certificate Ref No. [ ]

**DESIGN CERTIFICATE (GENERAL)**

**In respect of :**.....

**(Provide submittal details)**

*Project Agreement between the City and Project Co dated XX XX, XXXX (“the Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.*

*Form of Certificate to be used by the Design Team for certifying the design of the Works to the extent that such Works components have been constructed, installed, altered, upgraded, and/or augmented, in accordance with Schedule 15-2 – Design and Construction Requirements.*

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.
  
2. We certify that we have prepared the Design Data for [.....] listed in the Schedule hereto in accordance with all applicable requirements contained in the Design Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
  - (a) complies with all applicable Output Specifications, as amended by the following:
    - (i) **[List, if any, the changes made by the issue of Variation(s)];**
  - (b) complies with all applicable design requirements of the Project Agreement;
  - (c) complies with all applicable standards, codes and current Good Industry Practice; and
  - (d) accurately describes and depicts the Works to be undertaken.

**SCHEDULE**

**[Include here drawing numbers and titles, reports, calculations, etc.]**

Certified by: .....

Design Team (representative)

Name: .....

Title: .....

Date: .....

Professional Registration Number: .....

Affix Professional Seal

Signed: .....

Construction Contractor representative

Name: .....

Date: .....

This Certificate is:

- i. reviewed\*
- ii. reviewed as noted as follows\*
- iii. returned marked “rejected” as follows:\*

\* delete as appropriate

Signed: .....

City Representative

Name: .....

Date: .....

Certificate Ref No. [ ]

**DESIGN CERTIFICATE (ENVIRONMENTAL)**

*Project Agreement between the City and Project Co dated XX XX, XXXX (“the Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.*

*Form of certificate to be used by the Design Team and the Environmental Director for certifying the design of environmental works incorporated in the Works in accordance with the Project Agreement.*

- 1) We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.
- 2) We certify that we have prepared the Design Data for [.....] [Name and list of all elements of the environmental works] in the Schedule hereto in accordance with all applicable requirements contained in the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion:
  - a) the said Design Data complies with all applicable Output Specifications, including Technical Appraisal Form No. [.....] dated [.....], as amended by the following:
    - i) **[List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];**
  - b) the said Design Data complies with all applicable design requirements of the Project Agreement;
  - c) the said Design Data complies with all applicable standards, codes, environmental permits licences approvals and authorizations, and current Good Industry Practice; and
  - d) the said Design Data accurately describes and depicts the Works to be undertaken.

**SCHEDULE**

**[Include here drawing numbers and titles and reports, calculations, etc.]**

Certified by: .....

Design Team (representative)

Name: .....

Title: .....

Date: .....

Professional Registration Number: .....

Affix Professional Seal

Signed: .....

Environmental Director

Name: .....

Title: .....

Date: .....

Professional Registration Number: .....

Affix Professional Seal

This Design Certificate is:

- i. reviewed\*
- ii. reviewed as noted as follows\*
- iii. returned marked “rejected” as follows.\*

\* delete as appropriate

Signed: .....

City Representative

Name: .....

Date: .....

**ATTACHMENT 2**

**Sample Construction Certificate**

Certificate Ref. No. [ ]

### CONSTRUCTION CERTIFICATE

*Project Agreement between the City and Project Co dated XX XX, XXXX (“the Project Agreement”) relating to the Project. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.*

Form of Certificate to be used by the Design Team for certifying, as applicable:

- a) the substantial completion of construction activities in respect of those components of the Works set out in paragraph 1 of this Construction Certificate;
- b) the Total Completion of construction activities in respect of the Works, including Minor Deficiencies; or
- c) the total completion of construction activities in respect of any Reinstatement Work carried out by the Construction Contractor pursuant to Section 30 [**Damage and Destruction**] in accordance with a Reinstatement Plan.

in accordance with Schedule 15-2 – Design and Construction Requirements.

#### Construction Contractor’s Statement

We certify that [**name and element of the Works in respect of the Substantial Completion Certificate**][**the Works in respect of the Final Completion Certificate**][**the Works in respect of the Final Completion Certificate (Reinstatement Work)**] has been designed, constructed, [**substantially completed**], [**totally completed**], commissioned and tested in all respects in accordance with: [**Note to Proponents: Inapplicable language to be deleted.**]

- a) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
- b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
  - (i) [**List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form**];

Signed.....

Construction Contractor representative

Name.....

Date.....

**Design Team’s Statement**

1. We certify that we have examined the [name and element of the Works in respect of the Substantial Completion Certificate][the Works in respect of the Final Completion Certificate][the Works in respect of the Final Completion Certificate (Reinstatement Work)] in accordance with the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion [the said element of the Works][the Works] has been designed, constructed, [substantially completed][totally completed], commissioned and tested in all respects in accordance with: **[Note to Proponents: Inapplicable language to be deleted.]**
- (a) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
  - (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):

**[List, if any, the changes made by the issue of Variation(s), and any Addenda to the foregoing Technical Appraisal Form];**

Signed.....

Design Team (representative)

Name.....

Title.....

Date.....

Professional Registration Number: .....

Affix Professional Seal

Receipt of this Certificate is acknowledged.

Signed.....

Independent Certifier

Name.....

Date.....

Professional Registration Number: .....

Affix Professional Seal

This Certificate is:

- i. reviewed\*
- ii. reviewed as noted as follows\*
- iii. returned marked “rejected” as follows:\*

\* delete as appropriate

Signed: .....

City Representative

Name: .....

Date: .....

## APPENDIX B - MINIMUM MAINTENANCE AND REHABILITATION

### SUBMITTAL REQUIREMENTS

#### 1. FORMAT FOR MAINTENANCE AND REHABILITATION SUBMITTALS

1.1 All Maintenance and Rehabilitation Submittals shall be submitted to the City in hardcopy and electronic format as follows:

(a) Hardcopy Requirements

- (i) three sets of all Maintenance and Rehabilitation Submittals shall be submitted in reduced format drawings (11" x 17", fold-outs, folded to 8.5" x 11"), included in 3-hole ring binders; and
- (ii) three sets of Maintenance and Rehabilitation Submittals which are not drawings shall be submitted in 8.5" x 11" format, unless otherwise specified.

(b) All other Submittals not otherwise specified shall be submitted to an EDMS as detailed below. In addition to hard copies, all Works Submittals (or as otherwise agreed upon by the Parties) shall be submitted to an EDMS and in an electronic format that is deemed reasonably acceptable to the City. As a minimum, this system shall comprise the following:

- (i) a cloud-based single platform which provides an easily configurable solution;
- (ii) user group security and restricted authorization function;
- (iii) browsing by project, folder or file name with drag and drop function;
- (iv) collaboration functions with the ability to electronically approve and stamp documents;
- (v) text searchable functions for PDF and native files;
- (vi) seamless integration;
- (vii) audit trail;

- (viii) pre-defined workflow & quality management systems;
  - (ix) read-only, real-time access for the City Representative and their nominated personnel;
  - (x) version control and notification capability;
  - (xi) analytics and reporting function; and
  - (xii) a review function with customizable mark-up tools.
- (c) CAD drawings (where applicable) shall be provided in accordance with the City of Ottawa's CADD Standards Manual; and
- (d) All Maintenance and Rehabilitation Submittals shall be uploaded to the web based project management system, in text-searchable PDF and in their native format, simultaneously with the submission to the City.

1.2 For a Maintenance and Rehabilitation Submittal to have been completed, all of the requirements of Article 1.1 shall be met.

## **2. SUBMITTALS**

2.1. The following is a detailed list of the Maintenance and Rehabilitation Submittals that Project Co is required to provide to the City for review and comment in accordance with this Schedule 10. Additional Maintenance and Rehabilitation Submittals may be requested by the City Representative at any time in order to understand the Maintenance and Rehabilitation Services, and Project Co shall be required to provide same to the City for review in accordance with this Schedule 10. A description of the minimum content of each Maintenance and Rehabilitation Submittal provided is set forth in Section 2.3 of this Appendix B.

2.2. Requirement for a Compliance Verification & Validation Matrix:

- (a) Project Co. shall report on PSOS compliance with a Compliance Verification & Validation Matrix. Compliance Verification & Validation Matrix should provide line by line reporting of all PSOS requirements and should provide full traceability between requirements and compliance demonstration including preliminary and final design references, quality assurance & control, testing & commissioning (including but not limited to FAT, PICO, SAT, SIT, and system wide testing).
- (b) The Compliance Verification & Validation Matrix should be submitted under Schedule 10 at three intervals: PDR, FDR, and prior

to system wide testing.

2.3. Unless otherwise specified in the table below, or an alternate date is mutually agreed with the City and confirmed in writing by the City in advance, the following definitions apply in the table below:

(a) “Annually in advance” means:

(i) submit at least ninety (90) days prior to the commencement of Testing and Commissioning;

(ii) re-submitted at least sixty (60) days prior to the commencement of each Contract Year;

(b) “Annually in retrospect” means submitted within thirty (30) days of the final day of each Contract Year;

(c) “Monthly” means submitted within seven (7) days of the end of each calendar month; and

(d) “Quarterly” means submitted within thirty (30) days of the final day of each consecutive period of three (3) calendar months, starting from Substantial Completion.

2.4. Submission Requirements

(a) Submission Requirements are detailed in the table below:

**[REDACTED]**

**SCHEDULE 11**

**INTEGRATED MANAGEMENT SYSTEM REQUIREMENTS**

**[REDACTED]**

**SCHEDULE 12  
WORKS SCHEDULING REQUIREMENTS**

**[REDACTED]**

**SCHEDULE 13**

**PROJECT CO PROPOSAL EXTRACTS**

**[REDACTED]**

**SCHEDULE 14**

**TESTING AND COMMISSIONING**

**[REDACTED]**

**SCHEDULE 15**

**OUTPUT SPECIFICATIONS**

**[REDACTED]**

## SCHEDULE 16

### ENCUMBRANCES

For purposes of this Schedule 16, the defined term “Lands” shall include any portion of the Lands.

#### A. General Encumbrances

Each of the following, to the extent affecting the interest (whether real property interest or contractual interest) of the City in the Lands or any other person who owns the Lands (or any part thereof), is, in each case, considered to be an encumbrance for the purposes of the Project Agreement (each, an “**Encumbrance**”):

- (i) liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by the City;
- (ii) inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to the City pursuant to the CLA or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, the City has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts;
- (iii) the rights reserved to or vested in the public or any municipality or governmental or other public authority by any statutory provision;
- (iv) any subsisting reservations, limitations, provisions and conditions contained in any grants from the Crown of any land or interests therein, including reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same;
- (v) any encroachments, easements, rights-of-way, rights to use or similar interests revealed by any survey of the Lands or which would be revealed by an up-to-date survey of the Lands;
- (vi) any rights in favour of or accruing to holders of under-surface rights which could be ascertained by a review of registered title or other public records, or, if unregistered, which do not materially interfere with the use of the Lands for the purposes of the Works;
- (vii) unregistered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, provided such unregistered agreements have been disclosed to Project Co, are described in Schedule 33 – Lands or could be ascertained by commercially standard off-title searches, or, if not so disclosed, described, or ascertainable, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided that such agreements have been complied with up to Financial Close, or, if not complied with (excluding non-compliance by Project Co and Project Co Parties), that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works;

- (viii) unregistered agreements, authorizations, consents, postponements, subordinations, licences or instruments entered into provided that they have been disclosed to Project Co, are described in Schedule 33 – Lands or could be ascertained by commercially standard off-title searches, or, if not so disclosed, described or ascertainable, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such agreements, authorizations, consents, postponements, subordinations, licences or instruments have been complied with up to Financial Close, or, if not complied with (excluding non-compliance by Project Co and Project Co Parties), that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works;
- (ix) unregistered easements, rights-of-way, rights to use, restrictions, restrictive covenants and similar rights in real property or any interest therein provided that they have been disclosed to Project Co, are described in Schedule 33 – Lands or which could be ascertained by commercially standard off-title searches, or if not so disclosed, described or ascertainable, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such easements, rights of way, rights to use, restrictions, restrictive covenants and similar rights or interests have been complied with up to Financial Close, or, if not complied with (excluding non-compliance by Project Co and Project Co Parties), that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works;
- (x) zoning (including, without limitation, airport zoning regulations), land use, property standards and building by-laws and ordinances, and federal, provincial or municipal by-laws and regulations;
- (xi) minor imperfections of title;
- (xii) statutory exceptions to title and any rights reserved to or vested in any person by any statutory provision;
- (xiii) the right of any prior owner, occupant or tenant of any portion of the Lands to occupy any portion of the Lands or to remove buildings, fixed machinery, equipment, fittings or other fixtures located on such portion of the Lands; and
- (xiv) the rights of any person entitled to any portion of the Lands through length of adverse possession or prescription.

**B. Specific Encumbrances**

**[REDACTED]**

**SCHEDULE 17  
ENVIRONMENTAL OBLIGATIONS**

**[REDACTED]**

**SCHEDULE 18  
COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT OBLIGATIONS**

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**PART 1            DEFINITIONS**

- 1.1    **“Construction Activities Incident”** has the meaning given in Section 5.1(e)
- 1.2    **“Complaints Protocol”** has the meaning given in Section 4.16.
- 1.3    **“Communications Performance Report”** has the meaning given in Section 4.17(a).
- 1.4    **“Communications and Stakeholder Engagement Objectives”** has the meaning given in Section 2.2(a).
- 1.5    **“Communications and Stakeholder Engagement Plan”** has the meaning given in Section 3.3.
- 1.6    **“Communications and Stakeholder Engagement Plan – Maintenance Period”** has the meaning given in Section 3.3(e).
- 1.7    **“Communications and Stakeholder Engagement Working Group”** has the meaning given in Section 6.1.
- 1.8    **“Crisis Communication Plan”** has the meaning given in Section 4.3(a).
- 1.9    **“Crisis Communication Plan - Maintenance Period”** has the meaning given in Section 4.3(b).
- 1.10    **“Key Milestone Celebrations”** means celebrations and larger events with the objective of building momentum for the Project, recognizing project milestones and partners. These celebrations include groundbreakings, progress events, and substantial completion.
- 1.11    **“Project Co Communications and Stakeholder Engagement Team”** has the meaning given in Section 3.3(a)(xviii).
- 1.12    **“Stakeholder Relations”** has the meaning given in Section 2.2(a).

## PART 2 PRINCIPLES OBJECTIVES AND SCOPE

### 2.1 Communications and Stakeholder Engagement Principles

- (a) The Project represents an important infrastructure commitment by the City. Comprehensive plans for communications and Stakeholder engagement are required to ensure Stakeholders are informed and engaged where necessary and to meet the City's communications and Stakeholder engagement requirements.
- (b) The City and Project Co shall work together to deliver these communications and Stakeholder engagement activities pursuant to the Project Agreement, including this Schedule 18.
- (c) The City will act as the public face of the project and lead on all Stakeholder Relations and communications activities.
- (d) Project Co acknowledges that:
  - (i) Project Co is the City's and the Stakeholders' primary source of information with respect to all matters within Project Co's control for the Project; and
  - (ii) The City, at all times during the Project Term, shall rely upon Project Co not only to anticipate matters which may be of interest and concern to Stakeholders during the Project Term (based on its experience as well as lessons learned during the course of the Project), but also to proactively organize and disseminate such information in accordance with its obligations in the Project Agreement so as to permit the Parties to perform their obligations hereunder.

### 2.2 Communications and Stakeholder Engagement Objectives

- (a) The "**Communications and Stakeholder Engagement Objectives**" of the Project are as follows:
  - (i) to engage with Stakeholders to provide targeted information to area residents and businesses on the Project design and Construction Activities and their potential impacts ("**Stakeholder Relations**") by:
    - (A) communicating disruptions, such as detours, overnight work, traffic adjustments and beginning of construction, in an effective and timely manner;
    - (B) providing public information and consultation opportunities to ensure Stakeholders are informed and engaged throughout to minimize complaints and increase understanding of the Project;
    - (C) ensuring Stakeholder input is obtained in a timely manner so that it may be properly considered by the Parties; and
    - (D) continuing to work with established community working groups and other networks identified during the planning and Environmental Assessment phase.
  - (ii) to communicate in a manner that builds excitement and understanding of the Project by:

- (A) developing momentum building communications to promote the Project, including Key Milestone Celebrations, signage, hoarding, and advertising;
  - (B) developing resources and templates to effectively and consistently communicate with Stakeholders; and
  - (C) recognizing the contribution of the Parties in this Project Agreement and the City's funding partners.
- (iii) during the Maintenance Period to continue to engage in providing Communications and Stakeholder Engagement activities as detailed in this Schedule but at a scope reflective of the potential maintenance issues.

### **2.3 Communication and Stakeholder Engagement Scope**

- (a) The scope of this Schedule 18 includes but is not limited to, all print, event and electronic communications and Stakeholder engagement related to: planning, design, Environmental Approvals, Construction Activities, Maintenance and Rehabilitation Activities, Project milestones, community and Stakeholder Relations, media relations, media and governmental events, other special events, public information meetings, branded products, the Project website, social media, complaints and issues related to the Project and any responses to such complaints or issues.

**PART 3 COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT RESPONSIBILITIES  
DURING THE PROJECT TERM**

**3.1 City Responsibilities**

- (a) The City will assume the lead communications and Stakeholder engagement role and will have the primary responsibility for all communications matters and Stakeholder Relations related to the Project. The City will:
- (i) develop a yearly updated Project Communications and Stakeholder Engagement Plan (the “**Communications and Stakeholder Engagement Plan**”) with input from Project Co;
  - (ii) develop and provide tools and templates for all communications and Stakeholder engagement Project materials unless otherwise specified in this Schedule 18;
  - (iii) develop and maintain a website, with input from Project Co;
  - (iv) provide identified, dedicated lead communications and Stakeholder engagement contacts;
  - (v) act as the primary media contact for the Project;
  - (vi) provide final review and approval of all communications and Stakeholder engagement materials;
  - (vii) communicate promptly with all relevant parties on Project issues; and
  - (viii) provide coordinated updates to Stakeholders.

**3.2 Project Co Communications Responsibilities**

- (a) Project Co shall:
- (i) carry out all activities required to fulfill all of Project Co’s communications and Stakeholder obligations in accordance with this Schedule 18;
  - (ii) along with the City participate in the development of Communications and Stakeholder Engagement Plan, and develop the Crisis Communication Plan in consultation with the City and Stakeholders and in accordance with this Schedule 18;
  - (iii) implement and comply with all plans, protocols and other documentation that have been reviewed and approved by the City and in accordance with this Schedule 18;
  - (iv) provide all information, materials and support to the City, as the City may reasonably require, in accordance with the requirements in the Communications and Stakeholder Engagement Plan and this Schedule 18;
  - (v) assist the City in responding to media, government and public enquiries related to the Project including but not limited to subject matter expertise, key facts and media questions and answers in accordance with the requirements in the Communications and Stakeholder Engagement Plan and this Schedule 18;

- (vi) provide, where required by the City, Project experts, to include but not be limited to design and construction engineers and environmental specialists to participate in special events, Stakeholder events and outreach meetings;
- (vii) in accordance with Part 5 of this Schedule, provide regular notifications to the City related to the management of local traffic during the Construction Period and ensure communication obligations in relation to the TTMP as detailed in Schedule 15-2, Part 7 – Traffic and Transit Management and Construction Access are fulfilled;
- (viii) attend special events, site tours and Stakeholder events and Stakeholder outreach meetings in accordance with Part 4 of this Schedule;
- (ix) work with the City to build and foster relationships with local businesses and the public in order to address the community’s concerns about the Works;
- (x) make staff available to respond to enquiries from Stakeholders about the Works;
- (xi) support the City in providing regular updates to immediately affected property owners, tenants and neighbourhoods on Works related issues;
- (xii) support the City in notifying affected residents and businesses of Construction Activities in accordance with Part 5 of this Schedule;
- (xiii) provide any necessary information required to demonstrate compliance with and fulfillment of the consultation related provisions of the Environmental Assessments and any other Environmental Approvals as detailed in Schedule 17 – Environmental Obligations;
- (xiv) support the City in making communications materials accessible to the public by meeting the City’s Accessibility Standards in compliance with the *Accessibility for Ontarians with Disabilities Act* (AODA) and in keeping with the City’s Accessibility Policy and Procedures;
- (xv) support the City in making communications materials available in French and English where required by the City in compliance with the City’s Bilingualism Policy;
- (xvi) work with all Project Co Parties, the City, and Project Stakeholders in carrying out Project Co’s obligations as set out in this Schedule 18;
- (xvii) ensure that Project Co and Project Co Parties exhibit a high degree of professionalism and courteousness with respect to carrying out all of Project Co’s obligations under this Schedule 18, including:
  - (A) attendance at City requested special events, site tours, Stakeholder events and Stakeholder outreach meetings;
  - (B) managing staff and contractor parking such that it does not negatively impact neighbourhood or business access;

- (C) not littering; and
  - (D) protecting and restoring any affected City and Third Party Facilities adjacent to the Works, in accordance with Schedule 15-2, Part 1, Article 4.1.
- (xviii) provide a description of Project Co’s dedicated communications and Stakeholder engagement team (the “**Project Co Communications and Stakeholder Engagement Team**”), within 45 days of Financial Close, including the roles, responsibilities and experience of each team member and Project Co Party who will assist the implementation of this Schedule 18. The Project Co Communications and Stakeholder Engagement Team shall:
- (A) be led by a Director of Communications and Stakeholder Engagement who:
    - 1) shall have the qualifications set out in Schedule 9 – Key Individuals;
    - 2) is a member of Project Co’s management team;
    - 3) is responsible for acting as the media spokesperson;
    - 4) [Intentionally Deleted]
    - 5) [Intentionally Deleted]
    - 6) possesses demonstrated relevant communications experience;
  - (B) provide sufficient other members of the team to meet the obligations of this Schedule who have relevant experience in communications writing, media relations, crisis communications, issues management, corporate and community relations;
  - (C) include at least one member acting as a Stakeholder outreach coordinator; and
  - (D) each member of the Project Co Communications and Stakeholder Engagement Team other than the Director shall possess a minimum of five years of transit or transportation construction-related communications experience.
- (b) Project Co acknowledges and agrees that, notwithstanding any other provision in this Schedule 18, the City will review and approve all communications and Stakeholder engagement materials with respect to the Project, and Project Co may not make any communications or disseminate any materials to Stakeholders with respect to the Project without the prior consent of the City.

### 3.3 Communications and Stakeholder Engagement Plan

- (a) The Project Co Communications and Stakeholder Engagement Team shall, no later than 60 days following Financial Close participate in the first Communications and Stakeholder Engagement Working Group meeting where the City will present an initial outline of the Project Communications and Engagement Plan.
- (b) Based on the outline of the Project Communications and Stakeholder Engagement Plan and in accordance with Schedule 18, Project Co will prepare a description of its communications and Stakeholder engagement requirements as part of the Communications and Stakeholder Engagement Plan no later than 90 days following Financial Close. This description will include the first submission of the first yearly construction schedule as detailed in Section 4.3.

- (c) Project Co shall participate with the City in a workshop to finalize the Communications and Stakeholder Engagement Plan. The City's communications and stakeholder engagement lead will organize and chair the workshop no later than 120 days following Financial Close.
- (d) Project Co shall participate with the City to update the Communications and Stakeholder Engagement Plan:
  - (i) on an annual basis; or
  - (ii) more frequently as may be requested by the City, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.
- (e) With respect to the Maintenance Period, the Project Co Communications and Stakeholder Engagement Team shall, no later than 60 days prior to Substantial Completion and prior to initiating any communications-related activity or disseminating any maintenance communications-related materials, participate as part of a Communications and Stakeholder Engagement Working Group meeting where the City will present the outline of the Communications and Stakeholder Engagement Plan for the Maintenance Period (the "**Communications and Stakeholder Engagement Plan – Maintenance Period**").
- (f) Based on the outline of the Project Communications and Stakeholder Engagement Plan – Maintenance Period and in accordance with Schedule 18, Project Co will prepare a description of its communications and Stakeholder engagement requirements as part of the Communications and Stakeholder Engagement Plan – Maintenance Period no later than 30 days prior to Substantial Completion. This description will include the first submission of the first yearly maintenance schedule as detailed in Section 4.3.

## **PART 4 COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT ACTIVITIES**

### **4.1 Communications Activities - General**

- (a) Project Co shall support the following communication activities during the Project Term as requested by the City, including:
- (i) Project communications via the Project website and social media;
  - (ii) construction schedule for communications
  - (iii) crisis communications;
  - (iv) issues management;
  - (v) media relations;
  - (vi) government reporting;
  - (vii) special events, site tours and trade show;
  - (viii) Stakeholder events and Stakeholder outreach meetings
  - (ix) hoarding design, installation and maintenance during the Construction Period;
  - (x) signage and branding;
  - (xi) advertising communications and marketing;
  - (xii) Project identity and graphic design;
  - (xiii) photography and video;
  - (xiv) renderings; and
  - (xv) crisis management.

### **4.2 Communications via the Project Website and Social Media**

- (a) Project Co shall support the City's social media strategy for the Project (which may include tools such as Twitter, Facebook, YouTube and Flickr) and the City's Project websites' static (written) and dynamic (multimedia) content, by providing, for review and approval by the City, where the quality of the photography and video is as described in Section 4.14.
- (i) During the Construction Period Project Co shall provide:
    - (A) a monthly feature web article highlighting, but not limited to, one aspect of the Project including, design, innovations on the Project, feature on local workers, general contractors or local companies, Construction Activities, or Project benefits,

- with a minimum length of 500 words, as well as two related Twitter posts for the Project's Twitter account;
- (B) a weekly construction update on Project construction that provides a recent summary of construction work completed and upcoming work along the alignment including high-quality representative professional photographs (see Section 4.14 for photo quality specifications);
  - (C) a weekly Twitter post with photograph(s) along with associated written description for the City's use including the Mayor;
  - (D) notifications of public consultations, consultation materials and post-consultation summaries;
  - (E) develop all photos for weekly construction updates for submission to and approval by the City;
  - (F) content for the interactive map(s) to be developed by the City that provide an overview of the extensions, along with information on key activities at each site (stations), which the City will regularly maintain and update monthly at a minimum;
  - (G) monthly short video clips for the purposes of social media; and
  - (H) up-to-date graphics, photos and video clips showcasing the design of each Station and progress of the Construction Activities.
- (ii) During the Maintenance Period Project Co shall provide:
- (A) a monthly maintenance update on the Project that provides a summary of recent maintenance work completed and upcoming maintenance work along the alignment including high quality representative professional photographs (see Section 4.14 for photo quality specifications) for submission to and approval by the City; and
  - (B) notifications of any public consultations if required including consultation materials and post-consultation summaries.
- (iii) provide drafts of proactive and reactive content for responses to crisis situations, immediate issues, public queries or complaints, no later than two hours after Project Co or the City becomes aware of any such crisis situation, immediate issue, public query or complaint; and
- (iv) provide draft advance notification for the purposes of website and social media updates for review and approval by the City with respect to meetings, events, initiatives, and Construction and Maintenance Activities that will have a direct impact on roads, traffic and/or transit; and
- (v) develop web content to support government Stakeholders web and social media communications needs for review and approval by the City.

#### 4.3 Construction and Maintenance Schedule for Communications

- (a) During the Project Term Project Co shall prepare and submit for the City’s review and approval the following schedule information. In advance of submitting the schedule information, Project Co shall also submit a template of each schedule for the City’s review and approval:
- (i) during the Construction Period a yearly construction schedule and detour plan and during the Maintenance Period a yearly maintenance schedule in a format that is readily useable in communicating the Project milestones, to be updated on a yearly basis and no later than March 31<sup>st</sup> of each calendar year to the end of the Project Term. This yearly plan should come in the form of a report with a visual chart and accompanying wording that identifies and describes timing and impacts of major issues and disruptive activities, and the communications milestones for the upcoming year, as categorized below:
    - (A) final station designs;
    - (B) start/end of prescribed detours;
    - (C) start/end of station construction;
    - (D) start/end of roadway works, or other bundled projects and components of the Works;
    - (E) start/end of road closures;
    - (F) start/end of sidewalk and/or MUP realignments; and
    - (G) start/end of works impacting greenspaces and park areas.
  - (ii) a semi-annual construction schedule update for use in communicating project milestones, as well as a semi-annual project dashboard to support the City’s communications and social media strategies that highlights key statistics and benefits of the project, including but not limited to the number of local firms employed, number of local jobs created and training through registered apprenticeship programs, subcontract value, kilometres of track laid, amount of concrete poured, level of completion of stations along the alignment extensions, to be updated no later than December 31<sup>st</sup> and June 30<sup>th</sup> of each calendar year;
  - (iii) a three-month look ahead calendar outlining construction and maintenance activities, including a description of scope and anticipated impacts, and any notification requirements as detailed in Part 5 of this Schedule and based on level of impact, and Project Co resources assigned, that will support the City’s communications and social media strategies; and
  - (iv) a dashboard to provide regular weekly updates and bi-weekly look-aheads about Construction Activities, including statistics, amount of local investments, number of direct jobs and training through registered apprenticeship programs, schedule and other information that will support the City’s communications and social media strategies.

#### 4.4 Crisis Communication

- (a) Project Co shall develop in consultation with the City a Crisis Communication Plan that outlines the roles, responsibilities and contacts for Project Co in relation to the City and other partners as required with respect to crisis communications, and identify and rank a list of potential crisis issues that could develop during the performance of the Works (the “**Crisis Communication Plan**”). The Crisis Communication Plan shall comply with the City’s emergency communication

plan and include notification standards for media responses, as described in Section 4.5, and shall include a crisis communication protocol. The Crisis Communication Plan must be submitted to the City, in advance of any construction activities, for review and approval in accordance with Schedule 10 – Review Procedure.

- (b) The Crisis Communication Plan must be updated 30 days following a crisis event and 60 days prior to Substantial Completion Project Co shall update the Crisis Communication Plan for the Maintenance Period in consultation with the City (the “**Crisis Communication Plan - Maintenance Period**”);
- (c) During the Project Term, Project Co shall:
  - (i) provide ongoing assistance to the City in the City’s development and updates to the Crisis Communication Plan;
  - (ii) during a crisis situation, make available sufficient Project Co communications staff and Project resources in order to work effectively with the City to proactively manage and perform Project Co’s communications responsibilities as set out in this Schedule 18; and
  - (iii) during a crisis situation provide the City with holding lines within 15 minutes of the event occurring.

#### **4.5 Issues Management**

- (a) During the Project Term, Project Co shall consult with and provide reasonable assistance to the City with respect to:
  - (i) identifying issues and trends as they emerge and develop strategies for tracking, addressing, mitigating, and minimizing issues related to the Project;
  - (ii) developing messages and strategies to address issues and provide accurate and timely information to affected Stakeholders; and
  - (iii) sharing information about potential issues related to the Project with other partners.
- (b) Project Co shall respond to all issues identified by the City within a timeframe as determined by the City for each issue.

Project Co shall develop an issues management protocol to be reviewed and approved by the City.

#### **4.6 Media Relations**

- (a) During the Project Term, Project Co shall:
  - (i) direct all media enquiries and interview requests to the City’s lead communications contact, who will determine the organization that is most suitable to respond to the enquiry;
  - (ii) provide draft responses and messaging to the City, with respect to all media enquiries and

- interview requests in a timely manner and track each request that Project Co responds to in a media request log;
- (iii) support the City with respect to all media enquiries and interview requests;
  - (iv) provide designated media relations staff (with backup media trained personnel, as required) with 24/7 availability to monitor, draft messaging and prepare responses to enquiries as requested by the City, in accordance with its level of urgency, as per the categories listed in Part 4.6(vii) below;
  - (v) provide communications training to Project Co staff, including refresher training regarding the City's communication protocols and policies for handling media, public, and Stakeholder interaction;
  - (vi) make available a Project Co designated media relations staff member and construction manager, maintenance manager or similar expert for the purposes of responding to technical matters related to media requests and interview requests if required and as requested by the City;
  - (vii) provide the City with information as requested to respond to media inquiries and with the level of urgency defined by the City where the measure of the level of urgency and timelines is as detailed below:
    - (A) Crisis requires Project Co to provide a holding statement within 15 minutes, in line with the Crisis Communications Plan;
    - (B) Urgent is 1 hour;
    - (C) Medium is 6 hours; and
    - (D) Low is 24 hours; and
  - (viii) at least twice yearly, provide the City with a summary of key accomplishments in a media-ready format, that can be used by the City to approach media (summary of construction progress, benefits, local economic impacts, spotlight on innovation, look aheads, etc.).

#### **4.7 Government Reporting**

- (a) During the Project Term, Project Co shall:
  - (i) support the City in meeting the requirements of the Governmental Authorities funding agreements for the Project by providing information about the Project status, upcoming milestones, and issues that may affect the Project including the provision of appropriate signage for construction and special events; and
  - (ii) participate in meetings with the City and Governmental Authorities when requested by the City.

#### 4.8 Special Events, Site Tours and Trade Show

- (a) The City and Project Co shall collaborate to develop, plan, and coordinate various special events during the Project Term.
- (b) During the Project Term, Project Co shall:
  - (i) at the City's request make Project sites available for governmental, public relations, media and public tours and events such that the City may, upon advance notice to, and in conjunction with Project Co, organize special events, including tours of the Site and Key Milestone Celebrations, costs of which will be borne by the City (excluding costs related to shutdown of the Project Operations or accommodations at the Site to organize such events, which shall be borne by Project Co). Project Co shall support any event described in this Section 4.8(b) as requested by the City, and provide a power source for communications equipment, and any other site costs.
  - (ii) ensure sufficient insurance and liability coverage is in place for any special events or venues, as required by the Project Agreement;
  - (iii) make Project Co staff available for events, tours of the Site, and provide support as may be required by the City;
  - (iv) develop content for events, as requested by the City, including but not limited to invitations, presentations, speaking notes, signage, high quality graphics and other visuals;
  - (v) support a minimum of two on-site full alignment tours (with Site access) and four special events per year during the Construction Period;
  - (vi) during the Construction Period and in consultation with the City, plan, organize and execute a trade show no later than 180 days following Financial Close. The City will develop templates for material to be used or displayed and will review and approve all materials to be distributed. The cost of the trade show will be borne by Project Co, including costs with respect to:
    - (A) renting the venue, tables, chairs;
    - (B) production of displays, invitations, signage and printed material;
    - (C) catering;
    - (D) print and radio advertising in trade and community and national media outlets as determined by the City;
    - (E) issuing invitations, tracking RSVPs and administering a survey;
    - (F) using best efforts to ensure a minimum attendance of 200 individuals, of which at least [REDACTED]% of attendees consist of industry vendors, suppliers and other

Works-related businesses and contacts;

- (G) providing overall event logistics and event production; and
- (H) production of post-event report to the City, the content of which may be posted publicly to the City's website.

#### **4.9 Stakeholder Events and Stakeholder Outreach Meetings**

- (a) Stakeholder events include public information sessions and public open houses, where information is shared with a group, or community feedback is solicited and presented back to the community, and invitations to the public or a larger group are issued. Project Co shall:
  - (i) hold, a minimum of four events during design (presentation of bid designs), 15 events during the Construction Period, and as is required during the Maintenance Period to communicate significant activities or changes and impacts, as requested by the City further to ongoing construction monitoring; and
  - (ii) during the Project Term and in consultation with the City, support and organize and execute ongoing and unplanned Stakeholder special events, the costs of which will be borne by Project Co, including costs with respect to:
    - (A) developing content for all materials including but not limited to high quality presentations, boards, invitations, handouts, post-event reports;
    - (B) developing high quality pop up displays that speak to general project details, benefits, and construction timelines that can be used at all Stakeholder events updated for consultation events during design phase and pre-construction and construction outreach;
    - (C) developing high quality community contact cards with information on project resources and key contacts during construction;
    - (D) covering the cost of print advertising in community newspapers, as described in this Schedule, and outlets as determined by the City; and
    - (E) at the City's discretion, distribute complete unaddressed mail drops to support these events.
- (b) Stakeholder meetings include community presentations and project presentations. These are targeted meetings for a variety of audiences to resolve issues, and communicate general and/or specific project information to a targeted audience. Project Co shall provide technical staff as required, and provide content as required including high quality graphics.

#### **4.10 Signage and Branding - Construction and Promotional Signage**

- (a) During the Project Term, Project Co shall:
  - (i) produce, print, install and remove signage, including wayfinding and business signage;

- (ii) prior to installation, provide to the City for approval stamped shop drawings of the sign fabrication and installation details, together with a mock-up of the signage, location and confirmation of the applicable Permits, Licences, Approvals and Authorizations;
- (iii) ensure appropriate signage is provided in a visible location for affected businesses to seek to ensure continuity of their business operations including compliance with the requirements of Schedule 15-2, Part 7, Article 6;
- (iv) ensure that Project Co and Project Co Parties comply with the construction and promotional signage requirements set out in the Project Agreement;
- (v) ensure the government Project signs are visibly displayed along the corridor throughout the Project Term;
- (vi) ensure that all signage is kept in good condition when installed and when not in use;
- (vii) replace any signage that is damaged by Project Co at Project Co's expense;
- (viii) provide screws, support posts and other fastening materials to install signage that are made of materials of good quality and durability;
- (ix) remove graffiti on temporary signage within 24 hours or, in the event that graffiti cannot be removed by means of normal cleaning methods, Project Co shall replace the damaged signage;
- (x) upon request from the City, Project Co shall design and provide dimensions of hoarding, fencing and barriers to support temporary signage provided by the City; and
- (xi) provide personnel to install, remove and relocate signage on an expedited basis if required by the City.

#### **4.11 Signage and Branding - Hoarding**

- (a) Project Co shall:
  - (i) during construction, develop a hoarding plan with the City that will respect various community contexts and build understanding and enhance the public image of the Project;
  - (ii) During the Maintenance Period, develop hoarding plans if required by the City for major maintenance work;
  - (iii) as part of the hoarding plan identify sites, for the City's review and acceptance, where decorative hoarding would be beneficial and context specific materials (scrim, metal sheets or plywood), and develop consistent hoarding design. Sites will include but are not limited to:
    - (A) high visibility and/or high traffic (pedestrian, cycling or car);

- (B) sites close to a community or greenspace being affected by Construction Activities;  
and
  - (C) sites in close proximity to businesses;
  - (iv) produce, print, install, remove and store decorative hoarding, including wayfinding and business signage;
  - (v) prior to installation, provide to the City for approval stamped shop drawings of the decorative hoarding, fabrication and installation details, together with a mock-up of the decorative hoarding, location and confirmation of the applicable Permits, Licences, Approvals and Agreements;
  - (vi) ensure that Project Co and Project Co Parties comply with the hoarding requirements set out in the Project Agreement;
  - (vii) ensure that all decorative hoarding is kept in good condition when installed;
  - (viii) replace any decorative hoarding that is damaged by Project Co at Project Co's expense;  
and
  - (ix) remove graffiti on decorative hoarding within 24 hours or, in the event that graffiti cannot be removed by means of normal cleaning methods, Project Co shall replace hoarding at sites, to a maximum of five hoarding panel replacements per year, within a reasonable time period or as otherwise required by Applicable Law;
- (b) The City shall develop the graphic design of the hoarding.

#### **4.12 Advertising Communications and Marketing**

- (a) During the Project Term, the City shall:
- (i) provide Project Co with its plan detailing advertisement and communications marketing strategies for the Project;
  - (ii) provide Project Co with templates for use in drafting public notices and advertisements including Stakeholder engagement opportunities and construction impacts; and
  - (iii) review and approve advertisements produced by Project Co about the Project's design and construction impacts and Stakeholder engagement opportunities related to the Project.
- (b) During the Project Term, Project Co shall:
- (i) support and contribute to the planning, development and execution of the City's public education and advertising campaigns related to the Works;
  - (ii) at Project Co's cost, plan, develop, and coordinate the placement of advertisements to communicate ongoing construction and maintenance impacts and to inform Stakeholders of engagement activities through a mix of media, including but not limited to, print daily,

community and commuter newspapers, radio, online media, multimedia and unaddressed mail in accordance with the following:

- (A) for each of the 15 Stakeholder events described in Part 4 of this Schedule, Project Co shall provide one insertion in a local community or daily newspaper (black and white, half page in size);
  - (B) for construction notices that indicate significant, long-term construction impacts of more than six months in duration, the frequency of the ads placed or notices issued will be based on the Construction Contractor's schedule and will include content for social media and City's regular communications channels (public service announcements, etc.), and could also include one local community or daily newspaper notice per major stage in work (black and white, quarter page in size); and
  - (C) for significant construction impacts (defined by the City in the traffic notification process) that have a significantly high impact on traffic and mobility, Project Co is responsible for the production of and cost to book regular 15 –second sponsor messages on weekdays, in the morning and afternoon peak commuter times. Radio ads will be played twice each hour between 6:00 a.m. and 10:00 a.m. in the morning and between 3:00 p.m. and 7:00 p.m. in the afternoon. Ads should appear on local radio stations of equal gross rating points to CFRB and/or CIHT (for radio).
- (iii) Project Co shall be responsible for the cost and coordination of Canada Post distribution of construction or major maintenance notices based on a 500 metre distribution area surrounding the area where the applicable impacts are occurring and shall:
- (A) provide content for public information and Stakeholder engagement materials;
  - (B) write content for monthly newsletters about the Project, for review and approval of the City;
  - (C) use hoarding and any other areas within the Lands for communication of the Project;
  - (D) not use, permit or authorize any third party to use any areas within the Lands for advertisement, without the prior written consent of the City, or as otherwise permitted in accordance with this Project Agreement;
- (iv) for clarity, Project Co shall submit all advertisements, insertions, construction notices, messages, and other associated documentation contemplated in this Section 4.10(b) for the City's review and approval prior to distributing, placing, posting, issuing, or producing any such advertisement, insertion, construction notice, maintenance notice, message or any other documentation.

#### **4.13 Project Identity and Graphic Design**

- (a) The City shall develop the brand identity for the Project and provide templates to Project Co as

required during the Project Term.

- (b) During the Project Term, Project Co shall:
  - (i) apply the City' design templates for information related to the Project and comply with Project identity standards on all information materials; and
  - (ii) provide all content and design layout of communication and community engagement materials, including quarterly newsletters, advertisements, public notices, flyers and publications to the City for review and approval at least three weeks prior to distribution.

#### **4.14 Photography and Video**

- (a) For the purposes of record-keeping and demonstrating the progress of the Project during the Construction Period, Project Co shall engage a professional photographer or field staff with appropriate equipment and training:
  - (i) during the Construction Period:
    - (A) on a regular basis and at least weekly, provide high quality photographs, graphics and images of the Project to the City for use in publications, presentations and on public websites, using a professional DSLR or mirrorless type camera. Photographs must be sharp, high-quality digital JPEG files at 300 DPI with an 8-bit colour depth, preferably converted from RAW image format;
    - (B) provide quality video clips of the Project to the City for use on Project websites and social media each month;
    - (C) develop a promotional video during the design phase that incorporates information and visuals of the complete extension, including but not limited to station designs. Video should incorporate key facts of the project, objectives, and connections provided by the extensions (educational institutions, cultural institutions, recreation, retail destinations, etc.) with project objectives, stations renderings, project details/connectivity etc.; and
    - (D) produce yearly, high quality video during construction that incorporates visuals provided to the City with the objectives of showing and highlighting construction progress.
  - (ii) Project Co will cause Project Co staff or Project Co Parties to provide consent to City respect to City's disclosure of photo and video content relating to the Project.
  - (iii) During the Project Term, Project Co shall, from time to time and as reasonably requested by the City, facilitate access for designated photographers and videographers.

#### **4.15 Renderings**

- (a) In addition to the renderings required in Schedule 10 – Review Procedure and Article 1 of Part 1 in Schedule 15-2, Part 4, Article 1, Project Co shall submit up to 10 additional photo realistic

renderings as requested by the City.

#### 4.16 Complaints Protocols

- (a) During the Project Term, the City shall be responsible for approving all responses to complaints and enquiries relating to the Project, and will be the lead on their intake, and will lead on tracking.
- (b) During the Project Term, Project Co shall:
  - (i) provide to the City for incorporation into the Communications and Stakeholder Engagement Plan a complaints protocol addressing how Project Co will deal with and respond to enquiries, suggestions and complaints received with respect to the Project during the Project Term (the “**Complaints Protocol**”) in an appropriate and timely manner, and submit the Complaints Protocol to the City for review and approval under Schedule 10 – Review Procedure;
  - (ii) be responsible for maintaining a software system that will track all complaints, enquiries and suggestions received and responses received with respect to the Project;
  - (iii) provide monthly complaint reports to the City, including an analysis of the main areas of concern to complainants; and
  - (iv) coordinate Project Co’s complaint tracking and complaint reports with any internal complaint tracking or complaint reports established by the City with respect to the Project as requested by the City.
- (c) Project Co acknowledges and agrees that the Construction Complaints Protocol will be publicly available at the request of the City.

#### 4.17 Communications Performance Monitoring and Auditing

- (a) Project Co shall prepare a communications performance report (“**Communications Performance Report**”) which shall be available for review each month in advance of the first Communications and Stakeholder Engagement Working Group weekly meeting for the month, as detailed in Section 6 of this Schedule. The Communications Performance Reports shall:
  - (i) be in a format agreed to by the City; and
  - (ii) summarize Project Co’s performance through the various communications activities in support of and execution of the protocols, strategies and plans developed for the Project.
- (b) Project Co shall develop an annual performance report, based on a template approved by the City, that summarizes the monthly reports and assesses DB Co’s overall compliance with Schedule 18 obligations. The annual yearly performance report shall be submitted to the City in accordance Schedule 10 – Review Procedure.

## PART 5 NOTIFICATION

### 5.1 General

- (a) With respect to Project Activities that are reasonably anticipated to have a major impact on third party property owners, Project Co shall:
- (i) provide Notice to the City of such Project Activities at least two weeks prior to the commencement of such Project Activities;
  - (ii) provide a draft public notification at least two weeks prior to the commencement of such Project Activities to the City for review and approval; and
  - (iii) The draft notices provided by Project Co in accordance with this Section 5.1(a) shall include a comprehensive list of the elements owned by a third party which Project Co anticipates will have to be removed or relocated by the property owner, what elements can remain on the property, detailed drawings that describes the proposed Construction or Maintenance Activities (including new location of relocated items or impacts that might result from the Construction or Maintenance Activities and restoration plans), proposed timeline for the Construction or Maintenance Activities (including duration and anticipated completion), contact information to obtain additional information, and any updates or complaints relating to such Construction or Maintenance Activities.
- (b) With respect to Construction or Maintenance Activities that are reasonably anticipated to have a major impact on transit users, pedestrians, residents, traffic, and/or Stakeholders generally, Project Co shall:
- (i) provide Notice to the City of such Construction or Maintenance Activities at least 35 days prior to the commencement of such Construction or Maintenance Activities;
  - (ii) provide a draft public notification at least 35 days prior to the commencement of such Construction or Maintenance Activities to the City for review; and
  - (iii) For the purposes of this Section 5.1(b), “major impact” shall include but not be limited to overnight construction or maintenance, temporary Construction Activities, paving, commissioning activities, privately owned elements to be relocated or removed by Project Co, and transit stop relocations.
- (c) With respect to Construction or Maintenance Activities that are reasonably anticipated to have a medium impact on transit users, pedestrians, residents, traffic, and/or Stakeholders generally, Project Co shall:
- (i) provide Notice to the City of such Construction or Maintenance Activities at least 15 Business Days prior to the commencement of such Construction or Maintenance Activities;
  - (ii) provide a draft public notification at least 10 Business Days prior to the commencement of such Construction or Maintenance Activities to the City for review; and
  - (iii) For the purposes of this Section 5.1(c), “medium impact” shall include but not be limited

to, major intersection work, any disruption to water, gas and/or other utilities, and impacts from noise or dust. For clarity, the notification provided by Project Co pursuant to Section 5.1(c)(ii) shall be delivered by Project Co on behalf of the City to all affected properties and in consultation with Utility Companies, as applicable.

- (d) With respect to Construction or Maintenance Activities that are reasonably anticipated to have a minor impact on transit users, pedestrians, residents, traffic and/or Stakeholders generally, Project Co shall:
- (i) provide Notice to City of such Construction or Maintenance Activities at least five Business Days prior to the commencement of such Construction or Maintenance Activities;
  - (ii) provide a draft public notification at least 48 hours prior to the commencement of such Construction or Maintenance Activities to the City for review; and
  - (iii) For the purposes of this Section 5.1(d), “minor impact” shall include short-term lane closures, minor pedestrian detours, and access and driveway work. Project Co shall ensure that access is maintained to properties impacted by the Construction or Maintenance Activities at all times.
- (e) With respect to an incident related to Construction or Maintenance Activities that are reasonably anticipated to have an impact on Project Co employees and contractors, transit users, pedestrians, residents, traffic and/or Stakeholders generally, and with respect to which Project Co cannot reasonably provide advance notice of any kind to the City or the public (a “**Construction Activities Incident**”), Project Co shall:
- (i) immediately notify the City of such Construction or Maintenance Activities Incidents;
  - (ii) provide a draft public notification or messaging no later than 15 minutes following the commencement of such Construction or Maintenance Activities Incidents to the City for review;
  - (iii) be prepared to provide a public statement with respect to the Construction or Maintenance Activities Incidents at the request of the City;
  - (iv) be prepared to enact the Crisis Communications Plan in consultation with the City and to react quickly to provide an immediate response to all affected Stakeholders and;
  - (v) For the purposes of this Section 5.1(e), a Construction and Maintenance Activities Incident shall include but not be limited to an accident on site or a major catastrophe.
- (f) The notifications provided by Project Co pursuant to this Section 5.1, once finalized by the City, shall be delivered by Project Co on behalf of the City to all affected properties and in consultation with Utility Companies, as applicable.

## **PART 6 COMMUNICATIONS AND STAKEHOLDER ENGAGEMENT WORKING GROUP**

### **6.1 Communications and Stakeholder Engagement Working Group**

- (a) Project Co shall provide staff to support the communications and Stakeholder engagement activities related to the Project. These Project Co staff along with identified City communications and Stakeholder engagement staff, will form a Communications and Stakeholder Engagement Working Group (the “**Communications and Stakeholder Engagement Working Group**”).
- (b) The leads on the Communications and Stakeholder Engagement Working Group representing both the City and Project Co will be members of the Works Committee during construction to ensure that communications and Stakeholder relations issues as part of the Project are addressed in an efficient and effective manner.
- (c) The objective of the Communications and Stakeholder Engagement Working Group is for Project Co and the City to work together to develop and implement all communications plans and Stakeholder engagement and community engagement activities for the Project to:
  - (i) ensure timely, open, transparent, effective, consistent and proactive communications with Stakeholders and elected officials;
  - (ii) foster and maintain positive and constructive relationships with neighbourhoods, agencies and businesses that may be affected by decisions regarding the scope of the Project as well as Construction and Maintenance Activities; and
  - (iii) build trust and maximize Stakeholder understanding and support for the Project.
- (d) Project Co shall ensure that the Construction Manager, Design Manager and during the Maintenance Period the Maintenance Manager and any other staff from Project Co or any Project Co Party that the City may require, are made available to support the Communications and Stakeholder Engagement Working Group as required.
- (e) Within 60 days following Financial Close, the Communications and Stakeholder Engagement Working Group will convene to discuss the communications and Stakeholder engagement obligations and to identify the working relationships, roles, responsibilities, deliverables and review approvals processes for the Project.
- (f) The Communications and Stakeholder Engagement Working Group will meet once per week throughout the Construction Period, or less frequently as agreed to by the City, to plan and implement communications and Stakeholder engagement strategies for the Project, share information, discuss community relations updates, identify and plan for communications, Stakeholder engagement and Project milestones, manage issues and receive schedule updates.
- (g) The Communications and Stakeholder Engagement Working Group will meet every month throughout the Maintenance Period, or less frequently as agreed to by the City, to plan and implement communications and Stakeholder engagement strategies for the Project, share information, discuss community relations updates, identify and plan for communications, Stakeholder engagement and Project milestones, manage issues and receive schedule updates.

## **PART 7 PUBLIC DISCLOSURE AND MEDIA RELEASES**

**7.1 Public Disclosure and Media Releases**

- (a) Neither Project Co nor any Project Co Parties shall issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, the Project Agreement, the City's activities or any related matters, without the prior written consent of the City.
- (b) Neither Project Co nor any Project Co Parties shall issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) making any implicit or explicit reference to RTG whatsoever, without prior written consent from RTG.
- (c) Neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, the Project Agreement, the City's activities or any matter related thereto, without the prior written consent of the other Party.
- (d) Project Co shall comply and shall ensure that all Project Co Parties comply, at all times, with the City's media release and publicity protocols or guidelines, as such protocols and/or guidelines may be updated by the City from time to time.

**PART 8 PERFORMANCE CRITERIA**

**8.1 Application of Performance Criteria**

- (a) The Performance Criteria set out in Section 8.2 have been established in accordance with Schedule 20 – Construction Period Payments. Project Co shall achieve the Performance Criteria set out in Section 8.2 during the Construction Period.

**8.2 Performance Criteria**

- (a) Please refer to the following KPI's in Schedule 20 - Construction Period Payments for the performance criteria:
- (i) CPPC – 21.
  - (ii) CPPC – 22.

## SCHEDULE 19

### PAYMENT MECHANISM

#### PART A: DEFINITIONS

##### Section 1. Definitions

Any capitalized term not defined in this Schedule 19 shall have the meaning given to such term in the Project Agreement.

- 1.1 “**Aggregate Train Kilometres Availability Ratio**” is defined in Section 1.2 of Part D.
- 1.2 “**Annual Service Payment**” means the sum in Canadian dollars calculated in accordance with the provisions set out in Section 2 of Part B.
- 1.3 Not Used.
- 1.4 “**Annual Service Payment – Service Portion**” means the sum in Canadian dollars representing the service payment portion of the Annual Service Payment, as identified in Section 2 of Part B.
- 1.5 “**Annual Utilities Consumption Adjustment**” means the annual adjustment calculated in accordance with Section 6 of Part B of this Schedule 19.
- 1.6 “**Annual Utilities Consumption Adjustment Report**” means the annual report prepared by Project Co in accordance with Section 0 of Part B of this Schedule 19.
- 1.7 “**Annual Utilities Consumption Adjustment Review Meeting**” means an annual meeting of the Performance Review Panel for the purpose set out in Section 6.7 of Part B of this Schedule 19.
- 1.8 “**Auxiliary Facilities Occupants**” has the meaning given in Schedule 15-1 – Maintenance and Rehabilitation Requirements.
- 1.9 “**Availability Failure**” means a Train Kilometres Availability Failure.
- 1.10 “**Bedding-In Period**” means the first four Contract Months of the Maintenance Period and if applicable, the first four Contract Months following completion of Remaining Works. In respect of New Revenue Vehicles the Bedding-In Period shall be the first six Contract Months following introduction of such New Revenue Vehicles into Revenue Service.
- 1.11 “**Contract Month**” means a calendar month, except with respect to:
- (a) the first Contract Month of the Maintenance Period, which runs from the Payment Commencement Date until the end of the calendar month in which such day falls; and
  - (b) the last Contract Month of the Maintenance Period, which runs from the first day of the calendar month in which the Expiry Date falls until the Expiry Date.
- 1.12 “**Contract Year**” means the period of 12 calendar months that commences on January 1<sup>st</sup> of each calendar year and ends on December 31<sup>st</sup> of the same calendar year, provided that:

- (a) the first Contract Year shall be such period that commences on the day following the Substantial Completion Date and ends on December 31<sup>st</sup> of the same calendar year; and
  - (b) the final Contract Year shall be such period that commences on January 1<sup>st</sup> that precedes the date on which the Project Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of the Project Agreement.
- 1.13 “**CPI-XFET**” means the Consumer Price Index excluding food, energy, and the effect of indirect taxes, as reported by Statistics Canada for Canada.
- 1.14 “**Daily Performance Report**” has the meaning given in Section 2.8 of Article 2 to Schedule 15-3 – Maintenance and Rehabilitation Requirements.
- 1.15 “**Deduction**” means a deduction made from a Monthly Service Payment in accordance with this Schedule 19.
- 1.16 “**Driver**” has the meaning given in Schedule 15 – Output Specifications.
- 1.17 “**Eligible Lifecycle Costs**” means incremental costs in respect of the replacement, refreshment and/or refurbishment during the Maintenance Period of System Infrastructure that may be reasonably attributed to a Service Level Increase.
- 1.18 “**Emergency**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.19 “**Escalation Factor**” means the escalation factor calculated in accordance with Section 4.1 of Part B.
- 1.20 “**Event**” means:
- (a) a Train Kilometres Availability Failure;
  - (b) a Quality Failure; or
  - (c) an incident or state of affairs which does not meet or comply with the Performance Criteria, which is capable of becoming a Quality Failure or Service Failure.
- 1.21 “**Event of Vandalism**” has the meaning given in Appendix A, Attachment 5 to Schedule 15-3 – Maintenance and Rehabilitation Requirements.
- 1.22 “**Failure Points**” means points allocated to Project Co in respect of the occurrence of Availability Failures, Service Failures and Quality Failures which are determined by the provisions set out in Part G.
- 1.23 “**Group 1 Stations**” and “**Group 2 Stations**” are defined in Schedule 15 – Output Specifications.
- 1.24 “**Help Desk**” means the contact point established by Project Co pursuant to Appendix A – Attachment 11 of Schedule 15-3 – Maintenance and Rehabilitation Requirements for the notification of Events and other day to day matters arising during the Maintenance Period.
- 1.25 “**Inflation Base Date**” means January 1 of the year in which Financial Close takes place.

- 1.26 “**Insurance Adjustment**” means the adjustment calculated in accordance with Schedule 24 – Insurance and Performance Security Requirements.
- 1.27 “**Insurance Review Date**” has the meaning given in Schedule 24 – Insurance and Performance Security Requirements.
- 1.28 “**Joint Insurance Cost Report**” has the meaning given in Schedule 24 – Insurance and Performance Security Requirements.
- 1.29 “**Labour Industrial Aggregate Index**” means the industrial aggregate excluding unclassified businesses index for Canada, CANSIM 281-0063, as reported by Statistics Canada.
- 1.30 “**Lifecycle Escalation Factor**” means the escalation factor calculated in accordance with Section 4.2 of Part B.
- 1.31 “**Lifecycle Payment**” means the relevant amount for each Contract Month as represented in Table 3 in Appendix A in respect of the replacement, refreshment and/or refurbishment of the System Infrastructure during the Maintenance Period. For clarity, amounts identified in Column H of Table 3 in Appendix A shall be governed by Section 3.2 of Part B in this Schedule 19.
- 1.32 “**Major Quality Failure**” means a Quality Failure which has been designated in Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19 as such.
- 1.33 “**Major Service Change**” has the meaning given in Schedule 15 – Output Specifications.
- 1.34 “**Major Service Failure**” means a Service Failure which has been designated in Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19 as such.
- 1.35 “**Medium Quality Failure**” means a Quality Failure which has been designated in Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19 as such.
- 1.36 “**Medium Service Failure**” means a Service Failure which has been designated in Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19 as such.
- 1.37 “**Minor Quality Failure**” means a Quality Failure which has been designated in Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19 as such.
- 1.38 “**Minor Service Failure**” means a Service Failure which has been designated in Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19 as such.
- 1.39 “**Monthly Service Payment**” means the sum in Canadian Dollars payable by the City to Project Co in accordance with the Project Agreement, as calculated in Section 1.1 of Part B.

- 1.40 “**Monthly Service Payment – Capital Portion**” means the sum in Canadian dollars representing the capital payment portion of the Monthly Service Payment, as identified in Section 1.1 of Part B.
- 1.41 “**Monthly Utilities Consumption Report**” means a report to be prepared by Project Co setting out the actual Utilities consumption for the Contract Month and the cumulative Contract Year-to-date, as reported in the Performance Monitoring Report for the Contract Month.
- 1.42 “**Non-Project Co Cause**” has the meaning given in Section 2 of this Part A.
- 1.43 “**Off-Peak Period**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.44 “**Off-Peak Period Train Kilometres Availability Ratio**” is defined in Section 1.5 of Part D.
- 1.45 “**Operations Service Plan**” has the meaning given in Attachment 1 of Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements.
- 1.46 “**Payment Commencement Date**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.47 “**Peak Period**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.48 “**Peak Period Train Kilometres Availability Ratio**” is defined in Section 1.4 of Part D.
- 1.49 “**Performance Criteria**” means a description in Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19 of the level of performance that Project Co must achieve to attain compliance with the relevant output specification.
- 1.50 “**Permanent Repair**” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 3 of Part E.
- 1.51 “**Quality Failure**” means any failure by Project Co to provide the Maintenance and Rehabilitation Services in accordance with any Performance Criteria designated as Failure Type “QF” in Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19, except where such failure is due to a Non-Project Co Cause.
- 1.52 “**Quality Failure Deduction**” means a Deduction which may be made in respect of a Quality Failure.
- 1.53 “**Rectification**” means, following the occurrence of an Event and where rectification is applicable in accordance with Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19, making good the Event so that the subject matter of the Event complies with the levels of service required pursuant to the Project Agreement. Without prejudice to the generality of the foregoing this shall include (a) restoring any functional capability which has been disabled or is otherwise not in compliance with the relevant Schedule; (b) repairing any defect, hazard, or

other condition which was not in compliance with the relevant Schedule; and (c) formally notifying the Help Desk that Rectification has been completed; and “Rectify” or “Rectified” shall be construed accordingly.

- 1.54 “**Rectification Time**” means the period specified in Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19 within which Rectification of the relevant Event must be completed, calculated from the time that such Event is reported to the Help Desk. For the avoidance of doubt, if no period for Rectification is specified in any of the above mentioned Schedules in respect of the relevant Event, no Rectification Time applies.
- 1.55 “**Remedial Period**” means the period allowed for remedying a Quality Failure in accordance with Section 1.3 of Part E.
- 1.56 “**Response**” means, following the notification of the occurrence of an Event and where response is applicable in accordance with Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19, the following actions by Project Co:
- (a) establishing the location, investigating the nature and cause of the Event and attending the site if necessary;
  - (b) appointing a suitably qualified, experienced and accountable person to assess the situation who, within reasonable limits, is empowered to take or to authorize any required action;
  - (c) taking any necessary actions to make the non-compliant system or item safe and secure, thereby as a minimum fulfilling all health and safety requirements;
  - (d) when necessary, giving the City Representative an assessment of the problem, the action taken, details of any work required with timescales and any limitations that this may impose on the Project Co System Infrastructure and the Maintenance and Rehabilitation Services; and
  - (e) formally advising the Help Desk that the Response has been completed.
- 1.57 “**Response Time**” means the time required by Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, Schedule 17 – Environmental Obligations, or this Schedule 19 for Project Co to complete its Response measured from when an Event is reported to the Help Desk.
- 1.58 “**Revenue Service**” has the meaning given in Schedule 15-1 – Output Specifications: Technical Terms and Reference Documents.
- 1.59 “**Revenue Service Train Kilometres**” means the total distance travelled by Trains in Revenue Service during a Contract Month, measured in kilometres and reported in the Monthly Performance Monitoring Report for that Contract Month. For clarity, Revenue Service Train Kilometres exclude ad-hoc activities required by the Operator (for example, additional kilometers for training of Operator staff, including Drivers) but include distances travelled by Trains for the purposes of entering into or exiting from Revenue Service.

- 1.60 “**Revenue Vehicles**” has the meaning given in Schedule 15 – Output Specifications.
- 1.61 “**RVSC Warranty Failure**” means a failure in a New Revenue Vehicle(s) causing a Train Kilometres Availability Failure and which Project Co can demonstrate to the City has been agreed or determined to be the responsibility of the Vehicle Supplier under Section 14 of Part 1 of the Revenue Vehicle Supply Contract. To the extent any such agreement or determination only occurs after Deductions have been levied for a Contract Month and which would have affected the level of such Deductions, an appropriate reconciliation adjustment shall be made in the next Monthly Service Payment to occur.
- 1.62 “**Scheduled Revenue Service Train Kilometres**” means the total Revenue Service Train Kilometres required in a Contract Month by the City through the booking process set out in Article 4.4 of Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements, measured in kilometres and reported in the Monthly Performance Monitoring Report for that Contract Month.
- 1.63 “**Security Operations Office**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Documents.
- 1.64 “**Service Failure**” means any failure by Project Co to provide the Maintenance and Rehabilitation Services in accordance with Performance Criteria designated Failure Type “SF” in Schedule 11 – Integrated Management System Requirements, Schedule 15-3 – Maintenance and Rehabilitation Requirements, or Schedule 17 – Environmental Obligations and which, where a Response Time or Rectification Time applies, has not been responded to or rectified (as the case may be) within the relevant time, except where such failure is due to a Non-Project Co Cause. For the avoidance of doubt, where no Response Time and/or Rectification Time applies (for example, in respect of scheduled activities) there shall be a Service Failure at the point at which the non-compliance occurred (for example, non-performance of the scheduled activity by the scheduled time).
- 1.65 “**Service Failure Deduction**” means a Deduction which may be made in respect of a Service Failure.
- 1.66 “**Service Level**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Document.
- 1.67 “**Service Level Decrease**” means a circumstance in any Contract Year where Project Co is required to provide a Service Level less than the Service Level contemplated for that Contract Year by the Operations Service Plan in effect at Financial Close.
- 1.68 “**Service Level Increase**” means a circumstance in any Contract Year where Project Co is required, to provide a Service Level in excess of the Service Level contemplated for that Contract Year by the Operations Service Plan in effect at Financial Close.
- 1.69 “**Station**” has the meaning given in Schedule 1 – Definitions and Interpretation.
- 1.70 “**System Event**” means an event identified as such in Table 1 in Section 1.8 of Part D. For the avoidance of doubt, a System Event is classified as a Train Kilometres Availability Failure.

- 1.71 “**Target Utilities Consumption Rates**” means the consumption rates for each of the Utilities in Table 4 in Appendix A of this Schedule 19.
- 1.72 “**Temporary Repair**” means, in respect of the occurrence of an Event which results in a Service Failure, Quality Failure, or Availability Failure, works of a temporary nature that do not constitute Rectification but temporarily allow for safe use of the affected elements of the System Infrastructure and substantially make good the relevant Event for the period until a Permanent Repair can be undertaken.
- 1.73 “**Total Train Kilometres**” means the total distance travelled by Trains in Revenue Service and for ad-hoc activities required by the Operator, during a Contract Month, measured in kilometres and reported by the Monthly Performance Monitoring Report for that Contract Month.
- 1.74 “**Train**” has the meaning given in Schedule 15-1 – Technical Terms and Reference Document.
- 1.75 “**Train Kilometres Availability Failure**” means any failure of the System Infrastructure contributing to the inability to attain the Scheduled Revenue Service Train Kilometres for a Contract Month, other than by reason of a Non-Project Co Cause. For the avoidance of doubt, Train Kilometres Availability Failures include the occurrence of System Events.
- 1.76 “**Train Kilometres Availability Failure Deduction**” means a Deduction calculated in accordance with Section 1.1 of Part D.
- 1.77 “**Un-Adjusted Service Payment**” means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 1.1 of Part B, without applying the sums represented by the symbols  $\Sigma D$  or AUA.
- 1.78 “**Utilities**” when used in this Schedule 19 only means metered electricity, natural gas, propane gas and potable water delivered to the Project during the Maintenance Period.
- 1.79 “**Utility Invoices**” are the invoices paid by the City to a Utility company for the consumption of Utilities for the Project during the Maintenance Period.
- 1.80 “**Weekday**” means Monday, Tuesday, Wednesday, Thursday, or Friday.

## **Section 2. Non-Project Co Causes**

- 2.1 Subject to Sections 2.2(c) and 2.4 of this Part A, for the purposes of this Schedule 19, a Non-Project Co Cause is one of the following issues or events, to the extent that such issue or event causes a Train Kilometres Availability Failure, Quality Failure, or Service Failure:
- (a) an action or order issued by the Operator or Governmental Authority, including:
    - (i) slowing down, re-routing or stopping a Train service from its schedule;
    - (ii) closing or partially closing a Station or Stop; and
    - (iii) any action or orders resulting from an Emergency;
  - (b) with regards to Passengers:

- (i) Passenger requests for emergency stops;
  - (ii) sick or injured Passengers requiring medical attention; or
  - (iii) attendance of Operator's security staff or Emergency Services to respond to Passenger actions;
  - (iv) Passengers holding open the doors of Revenue Vehicles at a platform beyond the scheduled dwell time provided that Project Co has not benefited from a relief under Part F of Section 4.1 of Schedule 19;
- (c) any blockage of the Guideway, including intersections, caused by:
- (i) a pedestrian, road or rail vehicle, vehicle loads (including spillages), failed traffic signal;
  - (ii) objects, except where those objects should have been identified by Project Co as part of its periodic inspection process and subsequently removed by Project Co;
- (d) Events of Vandalism;
- (e) the unlawful or negligent acts or omissions of System Users, Protesters and Trespassers subject to Section 9.7(c) of the Project Agreement, Governmental Authorities, Additional Contractors, Third Party Contractors, Operator or Auxiliary Facility Occupants; for the avoidance of doubt, in respect of this Section 2.1(e) these include:
- (i) any breach or failure to comply with by-laws applicable to System Users; and
  - (ii) failure by any person who is subject to the Standard Operating Procedures and/or Capital Railway Rules to act in accordance with the Standard Operating Procedures and/or Capital Railway Rules;
- (f) the actions of Additional Contractors, subject to Section 9.8 of the Project Agreement, provided that if the City has assigned certain responsibilities to Project Co in accordance with Section 9.8 of the Project Agreement, then a Non-Project Co Cause shall only apply where the City fails to carry out its responsibilities in Section 9.8(d) of the Project Agreement;
- (g) conditions exceeding the operating environmental parameters specified in Section 4.3(b) of Part 1 of Schedule 15-2 – Design and Construction Requirements that result in the degradation of the performance of the Revenue Vehicles;
- (h) interruption to the Operation, Maintenance and Rehabilitation Services caused by loss of utility service or electrical power outside the nominal range or lack of supply of diesel, including lawful imposition of restrictions by a Governmental Authority;
- (i) Train Kilometres Availability Failures caused by the City or the Operator in connection with Revenue Vehicle Final Acceptance Testing conducted during Revenue Service;

- (j) Train Kilometres Availability Failures caused by the Operator failing to implement a catch-up mode of operation in accordance with the schedule regulation protocol of the Standard Operating Procedures; and
  - (k) A Major Maintenance Shutdown, subject to Project Co receiving written approval from the City in accordance with Section 1.5(e) of Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements.
- 2.2 Project Co shall only be entitled to any relief and a Non-Project Co Cause shall only be applicable pursuant to this Section 2 to the extent that,
- (a) the issue or event described in Section 2.1 of this Part A,
    - (i) was not caused or contributed to by any act or omission of Project Co or any Project Co Party;
    - (ii) was not caused or contributed to by any Province Person acting in accordance with a written recommendation or instruction of Project Co or any Project Co Party; or
    - (iii) could not have been prevented or mitigated by the proper performance of Project Co's obligations under the Project Agreement;
  - (b) Project Co has taken, and continues to take, commercially-reasonable steps to mitigate the consequences of the Non-Project Co Cause, and, in respect of Section 2.1(g) of this Part A only, including implementation of commercially-reasonable advice from the Revenue Vehicle Manufacturer; and
  - (c) Project Co is not entitled to compensation payable pursuant to any insurance policy that clearly and expressly by the policy's terms reimburses Project Co for the Deductions that would be applied by the City in respect of such Non-Project Co Cause, or would have been entitled to recover under any insurance policy that clearly and expressly by the policy's terms reimburses Project Co for Deductions had it complied with the requirements of the Project Agreement in respect of insurance or the terms of any policy of insurance required under the Project Agreement
- 2.3 For clarity, if the issue or event described in Section 2.1 of this Part A entitles Project Co to relief and/or compensation under Sections 40, 41 or 42 of the Project Agreement, Project Co shall only be entitled to rely on Non-Project Co Causes to the extent that Sections 40, 41 or 42 of the Project Agreement do not apply.
- 2.4 Following an issue or event described in Section 2.1 of this Part A, Project Co shall resume performance of the Maintenance and Rehabilitation Services as soon as practicable.
- 2.5 For the avoidance of doubt, to the extent that an issue or event described in Section 2.1 of this Part A does not directly prevent Project Co's ability to respond to or rectify (as the case may be) an Event, Project Co shall not be relieved of any resulting Quality Failure or Service Failure by reason of any Non-Project Co Cause (as applicable).

**PART B: CALCULATION OF SERVICE PAYMENTS**

**Section 1. Monthly Service Payment**

- 1.1 The Monthly Service Payment shall be payable in respect of each Contract Month during the Maintenance Period. The Monthly Service Payment shall be calculated in accordance with the following formula:

$$MSP_n = \left( \frac{ASP_n}{12} \right) + MSPcap_n + LCP_n - \Sigma D \pm AUA$$

Where:

$MSP_n$  Means the Monthly Service Payment for the Contract Month for which the formula is to be applied.

$ASP_n$  Means the applicable Annual Service Payment for the Service Level in effect for the relevant Contract Year, calculated in accordance with the provisions set out in Section 2.1 of this Part B.

$MSPcap_n$  Means the Monthly Service Payment – Capital Portion for the relevant Contract Month, as referenced in Column B of Table 1 in Appendix A

$LCP_n$  Means the Lifecycle Payment for the relevant Contract Month, calculated in accordance with the provisions set out in Section 3.1 of this Part B.

$\Sigma D$  Means the sum of Train Kilometres Availability Failure Deductions, Quality Failure Deductions, and Service Failure Deductions in respect of the relevant Contract Month.

$AUA$  Means any applicable Annual Utility Adjustment arising pursuant to the terms of Section 6 of this Schedule 19.

- 1.2 If the calculation prescribed by Section 1.1 of Part B to this Schedule 19 yields an amount for a Contract Month which is a negative number, then the Monthly Service Payment for the relevant Contract Month shall be deemed to be zero (0).

**Section 2. Annual Service Payment**

- 2.1 The Annual Service Payment for any Contract Year shall be calculated in accordance with the following formula:

$$ASP_n = (ASPser_o * ESC_n) + ((SPV_1 + SPV_2) * ESC_n) + BRIC + IA$$

Where:

$ASP_n$  Means the total, escalated Annual Service Payment for the relevant Contract Year.

<i>ASP<sub>ser,o</sub></i>	Means the un-escalated Annual Service Payment – Service Portion for the Service Level in effect during the relevant Contract Year, as referenced in Column B of Table 2 in Appendix A.
<i>ESC<sub>n</sub></i>	Means the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.1 of this Part B.
<i>SPV<sub>1</sub></i>	Means for each Contract Month the amount referenced in Column C of Table 10 in Appendix A.
<i>SPV<sub>2</sub></i>	Means an amount equal to <b>\$(REDACTED)</b> for Contract Months 1 to 312, inclusive, and equal to <b>\$(REDACTED)</b> for all other Contract Months.
<i>BRIC</i>	Means the annual Base Relevant Insurance Cost as set out in the Financial Model being an amount equal to <b>\$(REDACTED)</b> for all Contract Years other than Contract Year 1 and Contract Year 28 for which this amount shall be equal to <b>\$(REDACTED)</b> .
<i>IA</i>	Means the Insurance Adjustment calculated in accordance with Section 2.2 and 2.3 of this Part B.

2.2 No later than 60 days prior to each Insurance Review Date, Project Co will require its insurance broker to prepare and submit to the City the Joint Insurance Cost Report. The City and Project Co, acting reasonably, will agree on the Insurance Adjustment to be applied to the Annual Service Payment for the next Contract Year.

2.3 The Insurance Adjustment will constitute an adjustment to the Annual Service Payment on the Payment Commencement Date and on each Insurance Review Date thereafter. The Insurance Adjustment will be applied in accordance with this Part B.

**Section 3. Lifecycle Payment**

3.1 The Lifecycle Payment applicable for any Contract Month *n* shall be calculated in accordance with the following formula:

$$LCP_n = (LCP_{Month\ n} * PESCLC * LCESC_n) + (LCP_{Month\ n} * (1 - PESCLC))$$

Where:

*LCP<sub>n</sub>* Means the total, escalated Lifecycle Payment applicable for the relevant Contract Month *n*;

*LCP<sub>Month n</sub>* Means the Lifecycle Payment for the relevant Contract Month *n* as set out in Table 3 in Appendix A for the Service Level identified by the City prior to commencement of the Maintenance Period;

*PESCLC* Means **\$(REDACTED)**%; and

*LCESC<sub>n</sub>* Means the Lifecycle Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.2 of this Part B.

- 3.2 Amounts for Lifecycle Payments identified in Column H of Table 3 in Appendix A shall apply irrespective of the Service Level in operations during the relevant Contract Months and shall only be payable by the City to Project Co in the event that works identified in Section 1.5(b) of Schedule 15-3 are undertaken by Project Co. In the event that such works are not required due to renewal of the AZR Exemption or otherwise, amounts identified in Column H of Table 3 in Appendix shall not be payable by the City.

#### Section 4. Escalation Factor

- 4.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$ESC_n = \frac{(CPI_n * W_{CPI})}{(CPI_o)} + \frac{(Labour_n * W_L)}{(Labour_o)}$$

Where:

*ESC<sub>n</sub>* Means the Escalation Factor applicable to the relevant Contract Year *n*.

*CPI<sub>n</sub>* Means the value of CPI-XFET on January 1 of the relevant Contract Year “*n*”, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 26 – Dispute Resolution Procedure, which most closely resembles such index.

*CPI<sub>o</sub>* Means the value of CPI-XFET on the Inflation Base Date, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index at the Inflation Base Date.

*W<sub>CPI</sub>* Means [REDACTED]%.

*Labour<sub>n</sub>* Means the value of the Labour Industrial Aggregate Index on January 1 of the relevant Contract Year “*n*”, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 26 – Dispute Resolution Procedure, which most closely resembles such index.

*W<sub>L</sub>* Means [REDACTED]%.

*Labour<sub>o</sub>* Means the value of the Labour Industrial Aggregate Index on the Inflation Base Date, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index at the Inflation Base Date, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 26 – Dispute Resolution Procedure,

which most closely resembles such index.

4.2 The Lifecycle Escalation Factor shall be calculated in accordance with the following formula:

$$LCESC_n = \frac{(CPI_n * WLC_{CPI})}{(CPI_o)} + \frac{(Labour_n * WLC_L)}{(Labour_o)}$$

Where:

*LCESC<sub>n</sub>* Means the Lifecycle Escalation Factor applicable to the relevant Contract Year *n*.

*CPI<sub>n</sub>* Means the value of CPI-XFET on January 1 of the relevant Contract Year “n”, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 26 – Dispute Resolution Procedure, which most closely resembles such index.

*WLC<sub>CPI</sub>* Means [REDACTED]%.

*Labour<sub>n</sub>* Means the value of the Labour Industrial Aggregate Index on January 1 of the relevant Contract Year “n”, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 26 – Dispute Resolution Procedure, which most closely resembles such index.

*WLC<sub>L</sub>* Means [REDACTED]%.

*CPI<sub>o</sub>* Means the value of CPI-XFET on the Inflation Base Date, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index at the Inflation Base Date, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 26 – Dispute Resolution Procedure, which most closely resembles such index.

*Labour<sub>o</sub>* Means the value of the Labour Industrial Aggregate Index on the Inflation Base Date, to be determined by reference to the most recent available monthly data published by Statistics Canada for the relevant index at the Inflation Base Date, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 26 – Dispute Resolution Procedure, which most closely resembles such index.

## Section 5. Changes in Service Level and Partial Years

5.1 If the Service Level is changed during a Contract Year resulting in a change in the Annual Service Payment during such Contract Year, the formula in Section 2.1 of this Part B above shall be applied by pro-rating the Annual Service Payment for such Contract Year based on the number of days in the Contract Year each Service Level is in effect.

5.2 With respect to the Contract Months in which:

- (a) the Payment Commencement Date, and
- (b) the Expiry Date,

occur, unless such date falls on the first or last day of the Contract Month (respectively), a pro rata adjustment to the Monthly Service Payment shall be made to reflect the actual number of days in the relevant Contract Month.

### **Section 6. Annual Utility Adjustment**

6.1 At the end of each Contract Year during the Maintenance Period Project Co shall calculate the Annual Utilities Consumption Adjustment in accordance with this Section 6. The Annual Utilities Consumption Adjustment shall be determined and applied to the Annual Service Payment for the next Contract Year to account for variations between actual Utilities consumption rates and Target Utilities Consumption Rates.

6.2 Where it is established in accordance with this Section 6 that an annual adjustment arises, the adjustment shall be given effect by way of an increase or decrease to the next Monthly Service Payment(s), as calculated in Section 1.1 of Part B of this Schedule 19. In the event that a relevant adjustment arises in respect of the final Contract Year, the adjustment shall be made pursuant to Sections 6.11 and 6.12 of this Schedule 19.

6.3 The Annual Utilities Consumption Adjustment shall be calculated as follows:

$$\begin{aligned} \text{Annual Utilities Consumption Adjustment} = & \\ & \text{Annual Natural Gas Consumption Adjustment} + \\ & \text{Annual Electricity Consumption Adjustment} + \\ & \text{Annual Propane Gas Consumption Adjustment} + \\ & \text{Annual Potable Water Consumption Adjustment} \end{aligned}$$

6.4 Project Co shall prepare and maintain a Monthly Utilities Consumption Report that sets out the actual Utilities consumption for the relevant Contract Month and Contract Year-to-date and shall use the Monthly Utilities Consumption Report to calculate the Annual Utilities Consumption Adjustment, if any, following the end of each Contract Year.

6.5 Notwithstanding actual unit costs for Utilities applicable in a Contract Year, the Annual Utilities Consumption Adjustment shall be based on unit costs for Utilities as at Financial Close (indexed). For clarity, these unit costs are indicated in Table 5 of Appendix A to this Schedule 19. Project Co shall have the right to request information from the City, as may reasonably be required, on the calculation of the unit costs of each Utilities, as applicable.

6.6 Project Co shall provide the City with a draft Annual Utilities Consumption Adjustment Report, as per Table 6, Table 7, Table 8, and Table 9 provided in Appendix A of this Schedule 19, within

- 40 Business Days following the end of each Contract Year, which report shall include copies of all working papers to fully support the calculation of the Annual Utilities Consumption Adjustment for the relevant Contract Year.
- 6.7 As soon as practicable and in any event within 40 Business Days following the end of each Contract Year (or on such other date as may be agreed between the City and Project Co), Project Co and the City shall convene an Annual Utilities Consumption Adjustment Review Meeting to be attended by the City representatives and Project Co representatives. At the Annual Utilities Consumption Adjustment Review Meeting, Project Co shall present the draft Annual Utilities Consumption Adjustment Report to the City, and the City and Project Co shall discuss the Annual Utilities Consumption Adjustment, if any, for the preceding Contract Year.
- 6.8 Project Co shall assist the City representatives and afford the City representatives such information and access as may reasonably be required for the City representatives to confirm the draft Annual Utilities Consumption Adjustment Report.
- 6.9 The City shall promptly notify Project Co of the details of any disagreement of all or any aspect of the draft Annual Utilities Consumption Adjustment Report, and the Parties shall then seek to agree to any matters in dispute, but where matters cannot be resolved within a 20 Business Day period (or such other period as may be otherwise agreed between the City representatives and the Project Co representatives, acting reasonably) they shall be dealt with in accordance with the Dispute Resolution Procedure.
- 6.10 Subject to Section 6.9 of Part B of this Schedule 19, within 20 Business Days following each Annual Utilities Consumption Adjustment Meeting, or within such period as may be otherwise agreed between the City representatives and the Project Co representatives, acting reasonably:
- (a) The City shall confirm its acceptance of all or any aspect of the Annual Utilities Consumption Adjustment Report; and
  - (b) Project Co and the City shall agree to any Annual Utilities Consumption Adjustment.
- 6.11 At the beginning of the final Contract Year, the City shall estimate, acting reasonably, the adjustments to the Monthly Service Payments for each Contract Month. The City may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each Contract Month of the final Contract Year.
- 6.12 Within 10 Business Days of receipt by the City of the applicable Annual Utilities Consumption Adjustment Report for the final Contract Year, the City Representative shall either:
- (a) determine and advise Project Co that the Annual Utilities Consumption Adjustment Report is approved by the City and perform a reconciliation between the amount payable based on such Annual Utilities Consumption Adjustment Report and the amount(s) the City previously paid in respect of the final Contract Year. Based on such reconciliation, either the City or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or
  - (b) if the City disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice the City is reasonably able to quantify it) which the City disputes and submit to

Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the City Representative shall perform a reconciliation between the undisputed amount payable based on such Annual Utilities Consumption Adjustment Report and the amount the City previously paid in respect of the final Contract Year. Based on such reconciliation, either the City or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that the City shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 6.13 of this Schedule 19.

- 6.13 If the City, acting in good faith, disputes all or any part of an Annual Utilities Consumption Adjustment Report and/or the Monthly Service Payments payable thereunder, it shall notify Project Co in writing of that part of the amounts (insofar as at the time of such notice the City is reasonably able to quantify it) which the City disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the dispute in question within 10 Business Days of the aforesaid notice of the dispute. If they fail to so resolve the dispute within such period, the Dispute may be referred for resolution in accordance with the Dispute Resolution Procedure. Following resolution of the dispute, any amount which has been paid by the City that is determined not to have been payable shall be paid forthwith by Project Co to the City and Project Co shall indemnify the City from and against any damages suffered or incurred resulting from such overpayment by the City on the basis that the due date was the date of the overpayment by the City. Following resolution of the dispute, any amount which has been withheld by the City that is determined to have been payable shall be paid forthwith by the City to Project Co and the City shall indemnify Project Co from and against any damages suffered or incurred resulting from such withholding by the City on the basis that the due date was the date upon which such amount became payable to Project Co.
- 6.14 Project Co may request an adjustment to any of the Target Utilities Consumption Rates on the following dates ("Target Utilities Consumption Rates Reset Milestone"):
- (a) the first (1<sup>st</sup>) anniversary of the Payment Commencement Date;
  - (b) the sixth (6<sup>th</sup>) anniversary of the Payment Commencement Date;
  - (c) the eleventh (11<sup>th</sup>) anniversary of the Payment Commencement Date;
  - (d) the sixteenth (16<sup>th</sup>) anniversary of the Payment Commencement Date; and
  - (e) the twenty first (21<sup>st</sup>) anniversary of the Payment Commencement Date.
- 6.15 Each request for an adjustment to any of the Target Utilities Consumption Rates must be submitted in writing to the City no later than 10 days before a Target Utilities Consumption Rates Reset Milestone and must include a detailed description and sufficient documentation for the City to consider the request. Such evidence shall include, without being limited to, demonstration of consistent variations between actual Utilities consumption rates and Target Utilities Consumption Rates.

- 6.16 In no circumstance shall a request for an adjustment to any of the Target Utilities Consumption Rates include an increase of more than [REDACTED]% to the relevant Target Utilities Consumption Rate applicable at the time of the request.
- 6.17 A request for an adjustment to any of the Target Utilities Consumption Rates shall be reviewed by the City and shall only become effective with the City's written consent, which consent may not be unreasonably withheld.

### **Section 7. Interim Substantial Completion**

- 7.1 As outlined in Section 25.15(b)(iv) of the Project Agreement, upon delivery by Project Co of a valid Interim Substantial Completion Notice, the parties shall proceed to execute a Variation ("**Interim Maintenance Variation**"). The following key principles shall form the basis for such Interim Maintenance Variation:
- (a) The Interim Maintenance Variation shall include a detailed schedule of activities, along with durations, start dates and end dates, required for completion of the Remaining Works;
  - (b) The Interim Maintenance Variation shall specify the period commencing at Interim Substantial Completion and ending upon completion of the Remaining Works ("**Interim Maintenance Period**") during which Project Co's Maintenance and Rehabilitation Services shall be based on Service Level 5 as defined in Attachment 2 in Appendix A to Schedule 15-3. Following conclusion of the Interim Maintenance Period, Project Co shall be responsible for undertaking the Maintenance and Rehabilitation Services for a period of 27 years with payments as outlined in this Schedule 19;
  - (c) The Parties shall agree in the Interim Maintenance Variation that payments to be made by the City to Project Co during the Interim Maintenance Period shall only include the following:
    - (i) Interim ASP – Service Portion: The magnitude of the Interim ASP – Service Portion amount to be paid to Project Co on a monthly basis shall be proportionally determined based on the Scheduled Revenue Service Train Kilometres to be operated during the Interim Maintenance Period relative to the Scheduled Revenue Service Train Kilometres contemplated for Service Level 1. In no event shall the Interim ASP – Service Portion exceed [REDACTED]% of the ASP – Service Portion associated with Service Level 1;
    - (ii) Interim ASP – Capital Portion: The amount and timing of the Interim ASP – Capital Portion shall be agreed to by the Parties and shall only include such amounts as necessary to maintain the Base Case Equity IRR when taking into consideration the Interim Maintenance Period and the ensuing 27-year period; and
    - (iii) Interim Lifecycle Payments: To the extent necessary, such amounts shall be agreed to by Project Co and the City upon development of the Interim Maintenance Variation only to the extent that the Interim Maintenance Period exceeds one year in duration. For clarity, for the first 12 months of the Interim Maintenance Period, no Interim Lifecycle Payments shall be made.



**PART C: DEDUCTIONS FROM MONTHLY SERVICE PAYMENTS - GENERAL**

**Section 1. Entitlement to Make Deductions**

- 1.1 If at any time during the Maintenance Period a Quality Failure, Service Failure or Availability Failure shall occur, the City shall be entitled to make a Deduction from the relevant Monthly Service Payment in respect of that Quality Failure, Service Failure or Availability Failure.
- 1.2 The maximum aggregate of all Deductions that the City can make from a Monthly Service Payment in respect of any Contract Month shall be the Un-adjusted Service Payment relating to that Contract Month.
- 1.3 During the Bedding-In Period, the amount of any Deductions in respect of Availability Failures occurring shall be reduced by [REDACTED]%. For the avoidance of doubt, there shall be no relief from Deductions in respect of Quality Failures and Service Failures or any Failure Points during the Bedding-In Period.

**Section 2. Classification of Deductions**

- 2.1 Subject to Section 2.2 of this Part C, the classification of an Event as a potential Quality Failure, Service Failure, or Availability Failure (or a combination thereof) shall be made at the time at which the occurrence of the Event is reported to the Help Desk. An Event which is incorrectly classified may be re-classified with the approval of the City Representative and the Project Co Representative, acting reasonably, in which case the applicable Monthly Performance Monitoring Report and Daily Performance Report will be revised accordingly.
- 2.2 A Train Kilometres Availability Failure is not required to be reported to the Help Desk. Train Kilometres Availability Failures will be determined through the Daily Performance Report process and summarized for Payment Mechanism calculation purposes in the Monthly Performance Monitoring Report.

**PART D: DEDUCTIONS FOR VEHICLE UNAVAILABILITY**

**Section 1. Train Kilometres Availability Failure Deductions**

- 1.1 The Train Kilometres Availability Failure Deduction in respect of a Contract Month  $n$ , shall be calculated in accordance with the following formula:

$$VKAFD_n = [VKDF_{A,n} * (USP_n)] + \sum SED$$

Where:

$VKAFD_n$  Means the Train Kilometres Availability Failure Deduction applicable to Contract Month  $n$

$VKDF_{A,n}$  Means the Deduction Factor in respect of Train Kilometres Availability Failures during Contract Month  $n$ , determined in accordance with Section 1.2 of this Part D.

$USP_n$  Means the Un-Adjusted Service Payment for Contract Month  $n$ .

$\Sigma SED$  Means the sum of System Event Deductions applicable to Contract Month  $n$ , calculated in accordance with Section 1.7 and Section 1.10 of this Part D.

- 1.2 The Deduction Factor in respect of Train Kilometres Availability Failures during Contract Month  $n$  ( $VKDF_n$ ) shall be determined by calculating the Aggregate Train Kilometres Availability Ratio for Contract Month  $n$ , in accordance with the formula set out below, and applying the corresponding Deduction Factor from Table 1 in Appendix B.

$$VKAR_{A,n} = (VKAR_{P,n} * 0.50) + (VKAR_{OP,n} * 0.50)$$

Where:

$VKAR_{A,n}$  Means the Aggregate Train Kilometres Availability Ratio during Contract Month  $n$ .

$VKAR_{P,n}$  Means the Peak Period Train Kilometres Availability Ratio during Contract Month  $n$ .

$VKAR_{OP,n}$  Means the Off-Peak Period Train Kilometres Availability Ratio during Contract Month  $n$ .

- 1.3 For the purposes of Section 1.2 of this Part D, when selecting a Deduction Factor from Table 1 in Appendix B, the Aggregate Train Kilometres Availability Ratio shall be rounded up to the nearest [REDACTED]%.

- 1.4 The Peak Period Train Kilometres Availability Ratio for Contract Month  $n$  shall be calculated in accordance with the formula set out below.

$$VKAR_{P,n} = \frac{(Rkm_{P,n} + NPCCKm_{P,n})}{Skm_{P,n}}$$

Where:

$VKAR_{P,n}$  Means the Peak Period Train Kilometres Availability Ratio during Contract Month  $n$ .

$Rkm_{P,n}$  Means the total amount of Revenue Service Train Kilometres during Peak Periods for Contract Month  $n$ .

$NPCCKm_{P,n}$  Means the number of Scheduled Revenue Service Train Kilometres which were “missed” or not achieved at Peak Periods during Contract Month  $n$  and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause.

$Skm_{P,n}$  Means the total Scheduled Revenue Service Train Kilometres during Peak Periods for Contract Month  $n$ .

- 1.5 The Off-Peak Period Train Kilometres Availability Ratio for Contract Month  $n$  shall be calculated in accordance with the formula set out below.

$$VKAR_{OP,n} = \frac{(Rkm_{OP,n} + NPCCKm_{OP,n})}{Skm_{OP,n}}$$

Where:

$VKAR_{OP,n}$  Means the Off-Peak Period Train Kilometres Availability Ratio service during Contract Month  $n$ .

$Rkm_{OP,n}$  Means the total amount of Revenue Service Train Kilometres during Off-Peak Periods for Contract Month  $n$ .

$NPCCKm_{OP,n}$  Means the number of Scheduled Revenue Service Train Kilometres which were “missed” or not achieved at Off-Peak Periods during Contract Month  $n$  and which are attributed in the relevant Monthly Performance Monitoring Report as being due to a Non-Project Co Cause

$Skm_{OP,n}$  Means the total Scheduled Revenue Service Train Kilometres during Off-Peak Periods for Contract Month  $n$ .

- 1.6 In Contract Months where Train Kilometres Availability Failures arise in part due to RVSC Warranty Failures:

- (a) the Train Kilometres Availability Failure Deductions to be calculated in Section 1.1 shall be recalculated as follows:

$$RVKAFDn = (VKAFDn * WF\% * WFA) + (VKAFDFn * (1-WF\%))$$

Where:

- RVKAFD<sub>n</sub>* Means the recalculated Train Kilometres Availability Failure Deduction applicable to Contract Month *n* which will replace VKAFD<sub>n</sub> in Section 1.1 of this Part D for Contract Month *n*
- VKAFD<sub>n</sub>* Has the meaning given to it in Section 1.1 of this Part D
- WF%* Means the percentage of the Train Kilometres Availability Failures for Contract Month *n* that have been agreed or determined to be caused by RVSC Warranty Failures
- WFA* Means the RVSC Warranty Failure adjustment, being \$[REDACTED] (indexed) divided by the Un-Adjusted Service Payment for Contract Month *n*.

1.7 The following deductions (“**System Event Deductions**”) shall also apply in respect of Train Kilometres Availability Failures. The maximum aggregate amount of System Event Deductions to be applied in one day shall be \$[REDACTED]. To the extent that a System Event Deduction is applied, no directly corresponding Quality Failure Deduction or Service Failure Deduction shall be applied in addition to the System Event Deduction.

**SYSTEM EVENT DEDUCTIONS - TABLE 1**

System Event is triggered where	System Event Deduction Applied
On any single Weekday during a Contract Month, the Peak Period Train Kilometres Availability Ratio for either (a) morning Peak Period service or (b) afternoon Peak Period service is less than [REDACTED]%.  	\$[REDACTED] per occurrence  For clarity, each Peak Period which fails to meet the [REDACTED]% service standard shall result in the \$[REDACTED] System Event Deduction, such that Project Co could receive two such deductions in a single day, one in respect of morning Peak Period service and the second in respect of afternoon Peak Period service.
On any single day during a Contract Month, the Aggregate Train Kilometres Availability Ratio for that day is less than [REDACTED]%.  	\$[REDACTED] per occurrence
On any single day during a Contract Month, an inability to provide train service to a terminal station (for clarity, this means Bayview Station, Limebank Station or Airport Station) for any duration that is in excess of a cumulative 36 minutes during that day, either on a continuous or	\$[REDACTED] per occurrence per Station  In the event that the same failure results in a System Event Deduction due to this trigger as well as either of the aforementioned triggers outlined in this table, only the Deductions resulting from a System Event(s) due to the aforementioned triggers shall be applied.

intermittent basis.	
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- 1.8 The System Event Deductions and the maximum daily aggregate amount listed above, shall be index-linked using the Escalation Factor as referred to in Section 4.1 of Part B.
- 1.9 For clarity, and subject to Sections Part A2.2(c) and Part A2.4, System Event Deductions shall not be applied to the extent that the triggering System Event is directly caused by a Non-Project Co Cause as described in Section 2.1 of Part A.
- 1.10 In Contract Months where any System Event Deduction arises in part due to RVSC Warranty Failures:
- (a) the System Event Deduction to be calculated in Section 1.7 shall be recalculated as follows:

$$RSED_n = (SED_n * WF\% * WFA) \text{ [the "Warranty Failure Component"}] + (SED_n * (1 - WF\%))$$

Where:

*RSED<sub>n</sub>* Means the recalculated System Event Deduction applicable to Contract Month *n* which will replace the System Event Deduction otherwise applicable under Section 1.7 of this Part D for Contract Month *n*

*SED<sub>n</sub>* Means the System Event Deduction otherwise applicable under Section 1.7 of this Part D to which this Section 1.10 applies

*WF%* Means the percentage responsibility for the occurrence of the System Event Deduction agreed or determined to be caused by RVSC Warranty Failures

*WFA* Means the RVSC Warranty Failure adjustment, being **[REDACTED]**%

- (b) where more than one System Event Deduction (to which paragraph (a) above applies) occurs in one day, the maximum aggregate amount that can be levied in respect of that day by way of Warranty Failure Components (as defined in the formula in paragraph (a) above) shall be **[\$[REDACTED]** (indexed) and any amount otherwise calculated in excess of that shall be disregarded.

## **Section 2. Partial Availability**

- 2.1 In respect of a Train Kilometres Availability Failure where the City exercises its discretion under Article 3 of Attachment 5 to Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements to permit a Vehicle which does not meet the Vehicle Availability Standard to be entered into Revenue Service as part of a Train, the Revenue Service Train Kilometres traveled by that Vehicle while it fails to meet such standard shall be deemed to be reduced by **[REDACTED]**%.

## **PART E: DEDUCTIONS FOR QUALITY FAILURES AND SERVICE FAILURES**

**Section 1. Amount of Deductions for Quality Failures**

- 1.1 The amount of the Deduction in respect of a Quality Failure shall be as follows:
- (a) in the case of a Minor Quality Failure, the sum of **\$(REDACTED)**, index-linked using the Escalation Factor as referred to in Section 4.1 of Part B;
  - (b) in the case of a Medium Quality Failure, the sum of **\$(REDACTED)**, index-linked using the Escalation Factor as referred to in Section 4.1 of Part B; and
  - (c) in the case of a Major Quality Failure, the sum of **\$(REDACTED)**, index-linked using the Escalation Factor as referred to in Section 4.1 of Part B.
- 1.2 There are no Response Times or Rectification Times in respect of Quality Failures. The occurrence of a Quality Failure will result in a Quality Failure Deduction in respect of the Contract Month in which the Quality Failure occurred.
- 1.3 Following the occurrence of a Quality Failure, Project Co shall be allowed a Remedial Period. The length of the relevant Remedial Period shall be specified by the relevant Performance Criteria. If, before the expiry of the Remedial Period, Project Co demonstrates, to the reasonable satisfaction of the City Representative, that it has remedied the Quality Failure, no further Deduction shall be made in respect of the Quality Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 1.1 of this Part E) and a further Remedial Period or Remedial Periods of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the City Representative, that it has remedied the Quality Failure.

**Section 2. Amount of Deductions for Service Failures**

- 2.1 The amount of the Deduction in respect of a Service Failure shall be as follows:
- (a) in the case of a Minor Service Failure, the sum of **\$(REDACTED)**, index-linked using the Escalation Factor as referred to in Section 4.1 of Part B;
  - (b) in the case of a Medium Service Failure, the sum of **\$(REDACTED)**, index-linked using the Escalation Factor as referred to in Section 4.1 of Part B; and
  - (c) in the case of a Major Service Failure, the sum of **\$(REDACTED)**, index-linked using the Escalation Factor as referred to in Section 4.1 of Part B.
- 2.2 Where a Service Failure Performance Criteria has a Response Time or a Rectification Time, a Service Failure shall only occur if the Event in question has not been responded to within the applicable Response Time or rectified within the applicable Rectification Time.
- 2.3 Following the occurrence of a Service Failure, Project Co shall be allowed an additional Response Time or Rectification Time (as the case may be) equivalent to the original Response Time or Rectification Time. If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of the City Representative, that it has remedied the Service Failure, no further Deduction shall be made in respect of the Service Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 2.1 of this

Part E) and a further Response Time or Rectification Time of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the City Representative, that it has remedied the Service Failure.

- 2.4 The provisions of Section 2.3 of this Part E shall not apply to Service Failures where, if the response or rectification is not carried out within the Response Time or the Rectification Time, as applicable, the City Representative notifies the Project Co Representative that the City no longer requires Project Co to address such Service Failure.
- 2.5 Where a Service Failure Performance Criteria has no Response Time or Rectification Time, a Service Failure shall occur upon the occurrence of the Event in question and a Service Failure Deduction shall apply in accordance with Section 2.1 of this Part E.

### **Section 3. Temporary Repairs**

- 3.1 If Project Co informs the City that it is unable to Rectify an Event within the specified Remedial Period or Rectification Time due to the need for specialized materials or personnel that are not, and cannot reasonably be expected to be, immediately available but that a Temporary Repair can be effected:
- (a) the City may, in its discretion and acting reasonably, permit Project Co to carry out the Temporary Repair; and
  - (b) where a Temporary Repair is permitted, a deadline by which a Permanent Repair must be made shall be agreed to by the Parties, each acting reasonably, giving Project Co a reasonable period within which to carry out the Permanent Repair (the “**Permanent Repair Deadline**”).
- 3.2 If the Temporary Repair is effected within the specified Remedial Period and the Permanent Repair is effected by no later than the Permanent Repair Deadline, only the first Quality Failure will be deemed to have occurred, and a Quality Failure Deduction may be made in respect of the Event. If the Temporary Repair is effected within the specified Rectification Time and the Permanent Repair is effected by no later than the Permanent Repair Deadline, no Service Failure will occur, and no Service Failure Deduction may be made in respect of the Event.
- 3.3 If the Temporary Repair is not effected within the specified Remedial Period or Rectification Time, a Quality Failure or Service Failure (as applicable) shall be deemed to occur and the following provisions shall apply:
- (a) there shall be a further period beginning at the expiry of the Remedial Period or Rectification Time and of a duration equal to that of the Remedial Period or Rectification Time;
  - (b) Project Co shall ensure that the Temporary Repair is successfully carried out prior to the expiry of the additional period referred to in Section 3.3(a) of this Part E;
  - (c) if the Temporary Repair is not successfully carried out prior to the expiry of the additional period referred to in Section 3.3(a) of this Part E, a further Quality Failure or

Service Failure (as applicable) shall occur and a further additional period shall commence;

- (d) unless the Temporary Repair has been successfully carried out prior to the expiry of the additional period then a further Quality Failure or Service Failure (as applicable) shall occur until such time as the Temporary Repair shall have been successfully completed; and
- (e) if the Temporary Repair is not successfully carried out prior to the Permanent Repair Deadline, and no Permanent Repair has been successfully carried out, the right for Project Co to carry out a Temporary Repair pursuant to this Section 3 shall cease and Section 3.4 of this Part E shall apply.

3.4 If the Permanent Repair is not effected by the Permanent Repair Deadline, a Quality Failure or Service Failure (as applicable) shall be deemed to occur.

- (a) Following the occurrence of a Quality Failure per Section 3.4 of this Part E, Project Co shall be allowed a Remedial Period. The length of the relevant Remedial Period shall be specified by the relevant Performance Criteria. If, before the expiry of the Remedial Period, Project Co demonstrates, to the reasonable satisfaction of the City Representative, that it has remedied the Quality Failure, no further Deduction shall be made in respect of the Quality Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 1.1 of this Part E) and a further Remedial Period or Remedial Periods of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the City Representative, that it has remedied the Quality Failure.
- (b) Following the occurrence of a Service Failure per Section 3.4 of this Part E, Project Co shall be allowed an additional Response Time or Rectification Time (as the case may be) equivalent to the original Response Time or Rectification Time. If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of the City Representative, that it has remedied the Service Failure, no further Deduction shall be made in respect of the Service Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 2.1 of this Part E) and a further Response Time or Rectification Time of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the City Representative, that it has remedied the Service Failure.

## PART F: REVIEW AND AMENDMENT OF PAYMENT MECHANISM

### Section 1. Five Year Review

- 1.1 The amount of Deductions for Train Kilometres Availability Failures, Quality Failures and Service Failures, as well as the overall functioning of the Payment Mechanism shall be reviewed by the City and Project Co at any time if requested by either Party, up to a maximum of one review per Contract Year. In any event, a review shall be carried out at least once in every five Contract Years.
- 1.2 The City and Project Co shall act reasonably and diligently in carrying out the reviews.
- 1.3 For the avoidance of doubt, the Parties intend that any changes made as a result of such a review shall not alter the overall risk profile of the relevant Maintenance and Rehabilitation Services or the likely magnitude of Train Kilometres Availability Failures, Quality Failures and Service Failures. Where proposed changes would result in any such alteration, the matter shall be deemed to be a Variation and Schedule 21 – Variation Procedure shall apply.
- 1.4 Any agreed adjustment pursuant to a review shall be effective from the commencement of the Contract Year immediately following the relevant review carried out in accordance with Section 1.1 of this Part F.

### Section 2. Peak Periods and Station Grouping

- 2.1 The City may change the hours within the definition of “Peak Period” within Article 1 (b) of Appendix A to Schedule 15-3 – Maintenance and Rehabilitation Requirements for the purposes of the Payment Mechanism, at its sole discretion at any time during the Maintenance Period by providing Project Co with sixty (60) days written Notice, provided that the total number of Peak Period hours in a week does not exceed thirty-five (35) hours, and the two daily peak periods are separated by a minimum of three (3) hours.
- 2.2 The City may, in its sole discretion, change the grouping of Stations (Group 1 Stations and Group 2 Stations), for the purposes of the Payment Mechanism, at any time during the Maintenance Period by providing Project Co with sixty (60) days written Notice, provided that:
  - (a) Group 1 shall not include more than seven (7) Stations; and
  - (b) if the change in the grouping causes a change in the overall risk profile of the relevant Maintenance and Rehabilitation Services, Project Co shall be entitled to a Variation and Schedule 21 – Variation Procedure shall apply.
- 2.3 The City may increase the total number of Peak Period hours per week and/or increase the number of Group 1 Stations, beyond the limits set out in 2.1 and 2.2, above, subject to agreement between the Parties on appropriate amendments to the Payment Mechanism in order to ensure there is no change in overall risk profile of the relevant Maintenance and Rehabilitation Services or the likely magnitude of Train Kilometres Availability Failures, Quality Failures and Service Failures. Where proposed changes would result in any such alteration in the risk profile, the matter shall be deemed to be a Variation and Schedule 21 – Variation Procedure shall apply.

**Section 3. Lifecycle Payment Adjustment**

- 3.1 In the event of a Service Level Increase, Project Co may request adjustments to the schedule of Lifecycle Payments set out in Table 3 of Appendix A, in accordance with the provisions of this Section 3 of this Part F.
- 3.2 Any adjustments to the schedule of Lifecycle Payments under this Section 3 of this Part F shall be limited to the introduction of new Lifecycle Payments in respect of Eligible Lifecycle Costs which, by virtue of a Service Level Increase, will either
- (a) require an additional cycle of replacement, refreshment and/or refurbishment during the Maintenance Period which is over and above such cycles already scheduled in the Maintenance and Rehabilitation Plan; or
  - (b) reach the end of their lifecycle and require replacement, refreshment and/or refurbishment during the Maintenance Period where no such replacement, refreshment and/or refurbishment is scheduled in the then-prevailing Maintenance and Rehabilitation Plan.
- 3.3 Any adjustments to the schedule of Lifecycle Payments under this Section 3 of this Part F must be
- (a) attributable by the quantity of service provided by Project Co, measured by Train Kilometres, and
  - (b) non-attributable to any Project Co failure to adhere to its Maintenance and Rehabilitation Plan,
- each supported by items 3.4(c) and 3.4(d) in the application process described below.
- 3.4 Project Co shall apply for an adjustment to the schedule of Lifecycle Payments as a Project Co Variation Notice in accordance with the provisions of Schedule 21 – Variation Procedure. In addition to the requirements of Schedule 21 – Variation Procedure, Project Co’s application shall contain the following elements:
- (a) Identify the components of the System Infrastructure and Eligible Lifecycle Costs which form the basis of the application;
  - (b) Identify the originally scheduled dates (if any) for replacement, refreshment and/or refurbishment of the relevant components of the System Infrastructure in the Maintenance and Rehabilitation Plan, and the proposed amended dates for such lifecycle works;
  - (c) Describe the rationale for the proposed amended dates for lifecycle works, with specific reference to the following:
    - (i) The number of Train Kilometres scheduled by the Operations Service Plan to have been provided at the originally scheduled date of lifecycle works;

- (ii) The number of Train Kilometres that will have been provided by Project Co at the proposed amended date of lifecycle works; and
  - (iii) Reference to manufacturer specifications or industry standards and the impact of the Service Level Increase in triggering a need for replacement, refreshment and/or refurbishment in accordance with these specifications or standards; and
  - (d) Carry out an internal quality audit on Project Co's adherence to its Maintenance and Rehabilitation Plan for the relevant components of the System Infrastructure.
- 3.5 For greater certainty, where Project Co's application includes a request for introduction of new Lifecycle Payments in accordance with Section 3.2 of this Part F, then the amount of such new Lifecycle Payments shall be determined in accordance with the terms of Schedule 21 – Variation Procedure.

**Section 4. Train Kilometres Availability Failure Deduction Adjustment**

- 4.1 Project Co may request adjustments to the Aggregate Train Kilometres Availability Ratios and Deduction Factors in Table 1 of Appendix B, in accordance with the provisions of this Section 4 of Part F in the event of one of the following instances:
- (a) The following two events occur:
    - (i) Operator does not meet the scheduled dwell times at a specific Station for a morning or afternoon weekday Peak Period on average over six Contract Months; and
    - (ii) The relevant vehicle capacity standards are exceeded by Revenue Vehicles leaving that Station for a morning or afternoon weekday Peak Period on average over six Contract Months; or
  - (b) The following two events occur:
    - (i) Operator does not meet the scheduled dwell times at a specific Station for a morning or afternoon weekday Peak Period when averaged over six Contract Months; and
    - (ii) The level of demand set out in the Operations Service Plan for the Service Level in use is exceeded for a morning or afternoon weekday Peak Period when averaged over six Contract Months.
- 4.2 For the avoidance of doubt, Project Co and the City intend that any adjustments to the schedule of Aggregate Train Kilometres Availability Ratios and Deduction Factors in Table 1 of Appendix B shall not alter the overall risk profile or the likely magnitude of Train Kilometre Availability Failure Deductions. Further, adjustments must:
- (a) be directly attributable to one or more of the events listed in Section 4.1, and
  - (b) not be attributable to any Project Co inability to achieve satisfactory Aggregate Train Kilometres Availability Ratios.

- 4.3 If deemed appropriate based on the conditions set out in Section 4.1, Project Co shall apply for an adjustment to the Aggregate Train Kilometres Availability Ratios and Deduction Factors in Table 1 of Appendix B as a Project Co Variation Notice in accordance with the provisions of Schedule 21 – Variation Procedure. In addition to the requirements of Schedule 21 – Variation Procedure, Project Co’s application shall contain the following elements as applicable:
- (a) Identify which Station(s) are impacted;
  - (b) Describe the rationale for the proposed amended Aggregate Train Kilometres Availability Ratios and Deduction Factors in Table 1 of Appendix B, with specific reference to the following:
    - (i) The number of Train Kilometres scheduled and to have been provided by the original Operations Service Plan;
    - (ii) The dwell times per impacted Station scheduled and to have been achieved based on the original Operations Service Plan; and
    - (iii) Reference to industry standards and the impact of the events listed in Section 4.1 in triggering a need for amendments to Train Kilometres Availability Ratios and Deduction Factors in Table 1 of Appendix B.
- 4.4 Project Co’s application shall provide the City with at least three months of Notice in advance of any proposed amendment.
- 4.5 Project Co and the City shall work collaboratively to minimize the number of adjustments to the Aggregate Train Kilometres Availability Ratios and Deduction Factors in Table 1 of Appendix B, including:
- (a) wherever possible, agreeing upon adjustments to the Operations Service Plan or the vehicle capacity standards; and
  - (b) deferring adjustment to the Aggregate Train Kilometres Availability Ratios and Deduction Factors in Table 1 of Appendix B where the City, acting reasonably, believes that the event(s) listed in Section 4.1 is temporary and Service Levels will soon revert to or track the Operations Service Plan in effect at Financial Close, and there is no long term Train Kilometres Availability Failure Deduction impact to Project Co.

**PART G: FAILURE POINTS**

**Section 1. Failure Points**

- 1.1 Failure Points shall be awarded for every Quality Failure, Service Failure, and Availability Failure which occurs during the Maintenance Period, unless such Failure Points are cancelled pursuant to any other provision of the Project Agreement.
- 1.2 The number of Failure Points attributable to Quality Failures, Service Failures, System Events, and Availability Failures is set out in Appendix C.
  - (a) Failure Points in respect of System Events shall be awarded following the identification of each such System Event through the Daily Performance Report;
  - (b) Failure Points in respect of Train Kilometres Availability Failure shall be awarded for each Contract Month based on the relevant Aggregate Train Kilometres Availability Ratio calculated for that Contract Month, in accordance with Sections 1.1 and 1.2 of Appendix C; and
  - (c) Failure Points in respect of Quality Failures and Service Failures shall be awarded in respect of each Quality Failure and Service Failure, in accordance with Section 6 of Appendix D.
- 1.3 For the avoidance of doubt when awarding Failure Points, where a further Availability Failure, Quality Failure or Service Failure is deemed to have occurred in accordance with Section 1 of Part D or Section 2 to Section 3 of Part E, the appropriate number of Failure Points shall be awarded in respect of each such Availability Failure, Quality Failure and Service Failure, even though they arise from the same circumstances.

**PART H: MONITORING AND REPORTING**

**Section 1. Sources of Information**

1.1 The table below sets out the sources of the factual information regarding the performance of the Maintenance and Rehabilitation Services for the relevant Contract Month for the purposes of calculating the relevant Monthly Service Payment, the Deductions assessed and the number of Failure Points awarded.

Item	Source
Revenue Service Train Kilometres for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Scheduled Revenue Service Train Kilometres for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Number of Scheduled Revenue Service Train Kilometres which were “missed” or not traveled by Project Co due to a Non-Project Co Cause, for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
System Events for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Quality Failures for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>
Service Failures for Contract Month <i>n</i>	Monthly Performance Monitoring Report for Contract Month <i>n</i>

**Section 2. Failure by Project Co to Monitor or Report**

2.1 If there shall be any error or omission in the Monthly Performance Monitoring Report for any Contract Month, Project Co and the City shall agree the amendment to the Monthly Performance Monitoring Report or, failing agreement within 10 days of notification of the error or omission which shall not be made more than 2 calendar months following the relevant Monthly Performance Monitoring Report, except in the circumstances referred to in Section 2.4 of this Part H either party may refer the matter to the Dispute Resolution Procedure.

2.2 If Project Co fails to monitor or accurately report any Availability Failure, Service Failure or Quality Failure then, without prejudice to the Deduction to be made in respect of the relevant Availability Failure, Service Failure or Quality Failure, the failure to monitor or report shall be deemed to be a new Quality Failure, and Project Co shall be awarded [REDACTED] Failure Points for each occurrence of such Quality Failure, unless the circumstances set out in Section 2.4 of this Part H apply, in which case Project Co shall be awarded [REDACTED] Failure Points for each such occurrence. No Deductions shall apply in respect of Quality Failures associated with Project Co’s failure to monitor or report as outlined in this Section 2.2.

- 2.3 In the event that any inspection or investigation by the City of records made available pursuant to the Project Agreement reveals any further matters of the type referred to in Sections 2.1 and 2.2 of this Part H, those matters shall be dealt with in accordance with Section 2.1 and 2.2 of this Part H, as appropriate, and the City shall, in addition, be entitled to make Deductions in respect of any Availability Failure, Service Failure or Quality Failure in the manner prescribed in Part C. Any such Deductions shall be made from the Monthly Service Payment, payable in respect of the Contract Month in which the relevant matters were revealed by the City's investigations or, to the extent that the City is unable to make any further deductions from the Monthly Service Payment in respect of that Contract Month by virtue of Section 1.2 of Part C, may be carried forward and deducted from Monthly Service Payments due in respect of subsequent Contract Months.
- 2.4 For the purposes of Sections 2.1 and 2.2 of this Part H the relevant circumstances are:
- (a) fraudulent action or inaction;
  - (b) deliberate misrepresentation; or
  - (c) gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.
- 2.5 The provisions of this Part H shall be without prejudice to any rights of the City pursuant to Sections 31, 43 and 58 of the Project Agreement.

**APPENDIX A: ANNUAL SERVICE PAYMENT AND MONTHLY SERVICE PAYMENT  
INPUTS**

**Table 1**

COLUMN A	COLUMN B	COLUMN A	COLUMN B
Contract Month	Monthly Service Payment – Capital Portion	Contract Month	Monthly Service Payment – Capital Portion
1	\$(REDACTED)	163	\$(REDACTED)
2	\$(REDACTED)	164	\$(REDACTED)
3	\$(REDACTED)	165	\$(REDACTED)
4	\$(REDACTED)	166	\$(REDACTED)
5	\$(REDACTED)	167	\$(REDACTED)
6	\$(REDACTED)	168	\$(REDACTED)
7	\$(REDACTED)	169	\$(REDACTED)
8	\$(REDACTED)	170	\$(REDACTED)
9	\$(REDACTED)	171	\$(REDACTED)
10	\$(REDACTED)	172	\$(REDACTED)
11	\$(REDACTED)	173	\$(REDACTED)
12	\$(REDACTED)	174	\$(REDACTED)
13	\$(REDACTED)	175	\$(REDACTED)
14	\$(REDACTED)	176	\$(REDACTED)
15	\$(REDACTED)	177	\$(REDACTED)
16	\$(REDACTED)	178	\$(REDACTED)
17	\$(REDACTED)	179	\$(REDACTED)
18	\$(REDACTED)	180	\$(REDACTED)
19	\$(REDACTED)	181	\$(REDACTED)
20	\$(REDACTED)	182	\$(REDACTED)

COLUMN A	COLUMN B	COLUMN A	COLUMN B
Contract Month	Monthly Service Payment – Capital Portion	Contract Month	Monthly Service Payment – Capital Portion
21	[\$[REDACTED]]	183	[\$[REDACTED]]
22	[\$[REDACTED]]	184	[\$[REDACTED]]
23	[\$[REDACTED]]	185	[\$[REDACTED]]
24	[\$[REDACTED]]	186	[\$[REDACTED]]
25	[\$[REDACTED]]	187	[\$[REDACTED]]
26	[\$[REDACTED]]	188	[\$[REDACTED]]
27	[\$[REDACTED]]	189	[\$[REDACTED]]
28	[\$[REDACTED]]	190	[\$[REDACTED]]
29	[\$[REDACTED]]	191	[\$[REDACTED]]
30	[\$[REDACTED]]	192	[\$[REDACTED]]
31	[\$[REDACTED]]	193	[\$[REDACTED]]
32	[\$[REDACTED]]	194	[\$[REDACTED]]
33	[\$[REDACTED]]	195	[\$[REDACTED]]
34	[\$[REDACTED]]	196	[\$[REDACTED]]
35	[\$[REDACTED]]	197	[\$[REDACTED]]
36	[\$[REDACTED]]	198	[\$[REDACTED]]
37	[\$[REDACTED]]	199	[\$[REDACTED]]
38	[\$[REDACTED]]	200	[\$[REDACTED]]
39	[\$[REDACTED]]	201	[\$[REDACTED]]
40	[\$[REDACTED]]	202	[\$[REDACTED]]
41	[\$[REDACTED]]	203	[\$[REDACTED]]
42	[\$[REDACTED]]	204	[\$[REDACTED]]
43	[\$[REDACTED]]	205	[\$[REDACTED]]

COLUMN A	COLUMN B	COLUMN A	COLUMN B
Contract Month	Monthly Service Payment – Capital Portion	Contract Month	Monthly Service Payment – Capital Portion
44	[\$[REDACTED]]	206	[\$[REDACTED]]
45	[\$[REDACTED]]	207	[\$[REDACTED]]
46	[\$[REDACTED]]	208	[\$[REDACTED]]
47	[\$[REDACTED]]	209	[\$[REDACTED]]
48	[\$[REDACTED]]	210	[\$[REDACTED]]
49	[\$[REDACTED]]	211	[\$[REDACTED]]
50	[\$[REDACTED]]	212	[\$[REDACTED]]
51	[\$[REDACTED]]	213	[\$[REDACTED]]
52	[\$[REDACTED]]	214	[\$[REDACTED]]
53	[\$[REDACTED]]	215	[\$[REDACTED]]
54	[\$[REDACTED]]	216	[\$[REDACTED]]
55	[\$[REDACTED]]	217	[\$[REDACTED]]
56	[\$[REDACTED]]	218	[\$[REDACTED]]
57	[\$[REDACTED]]	219	[\$[REDACTED]]
58	[\$[REDACTED]]	220	[\$[REDACTED]]
59	[\$[REDACTED]]	221	[\$[REDACTED]]
60	[\$[REDACTED]]	222	[\$[REDACTED]]
61	[\$[REDACTED]]	223	[\$[REDACTED]]
62	[\$[REDACTED]]	224	[\$[REDACTED]]
63	[\$[REDACTED]]	225	[\$[REDACTED]]
64	[\$[REDACTED]]	226	[\$[REDACTED]]
65	[\$[REDACTED]]	227	[\$[REDACTED]]
66	[\$[REDACTED]]	228	[\$[REDACTED]]

COLUMN A	COLUMN B	COLUMN A	COLUMN B
Contract Month	Monthly Service Payment – Capital Portion	Contract Month	Monthly Service Payment – Capital Portion
67	\$(REDACTED)	229	\$(REDACTED)
68	\$(REDACTED)	230	\$(REDACTED)
69	\$(REDACTED)	231	\$(REDACTED)
70	\$(REDACTED)	232	\$(REDACTED)
71	\$(REDACTED)	233	\$(REDACTED)
72	\$(REDACTED)	234	\$(REDACTED)
73	\$(REDACTED)	235	\$(REDACTED)
74	\$(REDACTED)	236	\$(REDACTED)
75	\$(REDACTED)	237	\$(REDACTED)
76	\$(REDACTED)	238	\$(REDACTED)
77	\$(REDACTED)	239	\$(REDACTED)
78	\$(REDACTED)	240	\$(REDACTED)
79	\$(REDACTED)	241	\$(REDACTED)
80	\$(REDACTED)	242	\$(REDACTED)
81	\$(REDACTED)	243	\$(REDACTED)
82	\$(REDACTED)	244	\$(REDACTED)
83	\$(REDACTED)	245	\$(REDACTED)
84	\$(REDACTED)	246	\$(REDACTED)
85	\$(REDACTED)	247	\$(REDACTED)
86	\$(REDACTED)	248	\$(REDACTED)
87	\$(REDACTED)	249	\$(REDACTED)
88	\$(REDACTED)	250	\$(REDACTED)
89	\$(REDACTED)	251	\$(REDACTED)

COLUMN A	COLUMN B	COLUMN A	COLUMN B
Contract Month	Monthly Service Payment – Capital Portion	Contract Month	Monthly Service Payment – Capital Portion
90	[\$[REDACTED]]	252	[\$[REDACTED]]
91	[\$[REDACTED]]	253	[\$[REDACTED]]
92	[\$[REDACTED]]	254	[\$[REDACTED]]
93	[\$[REDACTED]]	255	[\$[REDACTED]]
94	[\$[REDACTED]]	256	[\$[REDACTED]]
95	[\$[REDACTED]]	257	[\$[REDACTED]]
96	[\$[REDACTED]]	258	[\$[REDACTED]]
97	[\$[REDACTED]]	259	[\$[REDACTED]]
98	[\$[REDACTED]]	260	[\$[REDACTED]]
99	[\$[REDACTED]]	261	[\$[REDACTED]]
100	[\$[REDACTED]]	262	[\$[REDACTED]]
101	[\$[REDACTED]]	263	[\$[REDACTED]]
102	[\$[REDACTED]]	264	[\$[REDACTED]]
103	[\$[REDACTED]]	265	[\$[REDACTED]]
104	[\$[REDACTED]]	266	[\$[REDACTED]]
105	[\$[REDACTED]]	267	[\$[REDACTED]]
106	[\$[REDACTED]]	268	[\$[REDACTED]]
107	[\$[REDACTED]]	269	[\$[REDACTED]]
108	[\$[REDACTED]]	270	[\$[REDACTED]]
109	[\$[REDACTED]]	271	[\$[REDACTED]]
110	[\$[REDACTED]]	272	[\$[REDACTED]]
111	[\$[REDACTED]]	273	[\$[REDACTED]]
112	[\$[REDACTED]]	274	[\$[REDACTED]]

COLUMN A	COLUMN B	COLUMN A	COLUMN B
Contract Month	Monthly Service Payment – Capital Portion	Contract Month	Monthly Service Payment – Capital Portion
113	[\$[REDACTED]]	275	[\$[REDACTED]]
114	[\$[REDACTED]]	276	[\$[REDACTED]]
115	[\$[REDACTED]]	277	[\$[REDACTED]]
116	[\$[REDACTED]]	278	[\$[REDACTED]]
117	[\$[REDACTED]]	279	[\$[REDACTED]]
118	[\$[REDACTED]]	280	[\$[REDACTED]]
119	[\$[REDACTED]]	281	[\$[REDACTED]]
120	[\$[REDACTED]]	282	[\$[REDACTED]]
121	[\$[REDACTED]]	283	[\$[REDACTED]]
122	[\$[REDACTED]]	284	[\$[REDACTED]]
123	[\$[REDACTED]]	285	[\$[REDACTED]]
124	[\$[REDACTED]]	286	[\$[REDACTED]]
125	[\$[REDACTED]]	287	[\$[REDACTED]]
126	[\$[REDACTED]]	288	[\$[REDACTED]]
127	[\$[REDACTED]]	289	[\$[REDACTED]]
128	[\$[REDACTED]]	290	[\$[REDACTED]]
129	[\$[REDACTED]]	291	[\$[REDACTED]]
130	[\$[REDACTED]]	292	[\$[REDACTED]]
131	[\$[REDACTED]]	293	[\$[REDACTED]]
132	[\$[REDACTED]]	294	[\$[REDACTED]]
133	[\$[REDACTED]]	295	[\$[REDACTED]]
134	[\$[REDACTED]]	296	[\$[REDACTED]]
135	[\$[REDACTED]]	297	[\$[REDACTED]]

COLUMN A	COLUMN B	COLUMN A	COLUMN B
Contract Month	Monthly Service Payment – Capital Portion	Contract Month	Monthly Service Payment – Capital Portion
136	[\$[REDACTED]]	298	[\$[REDACTED]]
137	[\$[REDACTED]]	299	[\$[REDACTED]]
138	[\$[REDACTED]]	300	[\$[REDACTED]]
139	[\$[REDACTED]]	301	[\$[REDACTED]]
140	[\$[REDACTED]]	302	[\$[REDACTED]]
141	[\$[REDACTED]]	303	[\$[REDACTED]]
142	[\$[REDACTED]]	304	[\$[REDACTED]]
143	[\$[REDACTED]]	305	[\$[REDACTED]]
144	[\$[REDACTED]]	306	[\$[REDACTED]]
145	[\$[REDACTED]]	307	[\$[REDACTED]]
146	[\$[REDACTED]]	308	[\$[REDACTED]]
147	[\$[REDACTED]]	309	[\$[REDACTED]]
148	[\$[REDACTED]]	310	[\$[REDACTED]]
149	[\$[REDACTED]]	311	[\$[REDACTED]]
150	[\$[REDACTED]]	312	[\$[REDACTED]]
151	[\$[REDACTED]]	313	[\$[REDACTED]]
152	[\$[REDACTED]]	314	[\$[REDACTED]]
153	[\$[REDACTED]]	315	[\$[REDACTED]]
154	[\$[REDACTED]]	316	[\$[REDACTED]]
155	[\$[REDACTED]]	317	[\$[REDACTED]]
156	[\$[REDACTED]]	318	[\$[REDACTED]]
157	[\$[REDACTED]]	319	[\$[REDACTED]]
158	[\$[REDACTED]]	320	[\$[REDACTED]]

COLUMN A	COLUMN B	COLUMN A	COLUMN B
Contract Month	Monthly Service Payment – Capital Portion	Contract Month	Monthly Service Payment – Capital Portion
159	\$(REDACTED)	321	\$(REDACTED)
160	\$(REDACTED)	322	\$(REDACTED)
161	\$(REDACTED)	323	\$(REDACTED)
162	\$(REDACTED)	324	\$(REDACTED)
		325	\$(REDACTED)

**Table 2**

COLUMN A	COLUMN B
<b>Service Level</b>	<b>Annual Service Payment – Service Portion</b> (in Inflation Base Date prices)
Service Level 1	[\$REDACTED]
Service Level 2	[\$REDACTED]
Service Level 3	[\$REDACTED]
Service Level 4	[\$REDACTED]

**Table 3**

COLUMN A	COLUMN B	COLUMN C	COLUMN D	COLUMN E	COLUMN F	COLUMN G	COLUMN H
<b>Contract Month</b>	<b>Period Start Date</b>	<b>Period End Date</b>	<b>Lifecycle Payment, Service Level 1</b> (in Inflation Base Date prices)	<b>Lifecycle Payment, Service Level 2</b> (in Inflation Base Date prices)	<b>Lifecycle Payment, Service Level 3</b> (in Inflation Base Date prices)	<b>Lifecycle Payment, Service Level 4</b> (in Inflation Base Date prices)	<b>Lifecycle Payments, Part B, Section 3.2</b> (in Inflation Base Date prices)
1	August 11, 2022	August 31, 2022	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]
2	September 1, 2022	September 30, 2022	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]
3	October 1, 2022	October 31, 2022	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]
4	November 1, 2022	November 30, 2022	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]
5	December 1, 2022	December 31, 2022	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]
6	January 1, 2023	January 31, 2023	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]
7	February 1, 2023	February 28,	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]	[\$REDACTED]

		2023					
8	March 1, 2023	March 31, 2023	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
9	April 1, 2023	April 30, 2023	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
10	May 1, 2023	May 31, 2023	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
11	June 1, 2023	June 30, 2023	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
12	July 1, 2023	July 31, 2023	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
13	August 1, 2023	August 31, 2023	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
14	September 1, 2023	September 30, 2023	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
15	October 1, 2023	October 31, 2023	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
16	November 1, 2023	November 30, 2023	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
17	December 1, 2023	December 31, 2023	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
18	January 1, 2024	January 31, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
19	February 1, 2024	February 29, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
20	March 1, 2024	March 31, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
21	April 1, 2024	April 30, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
22	May 1, 2024	May 31, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
23	June 1, 2024	June 30, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
24	July 1, 2024	July 31, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
25	August 1, 2024	August 31, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
26	September 1, 2024	September 30, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
27	October 1, 2024	October 31, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
28	November 1, 2024	November 30, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
29	December 1, 2024	December 31, 2024	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

30	January 1, 2025	January 31, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
31	February 1, 2025	February 28, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
32	March 1, 2025	March 31, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
33	April 1, 2025	April 30, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
34	May 1, 2025	May 31, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
35	June 1, 2025	June 30, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
36	July 1, 2025	July 31, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
37	August 1, 2025	August 31, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
38	September 1, 2025	September 30, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
39	October 1, 2025	October 31, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
40	November 1, 2025	November 30, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
41	December 1, 2025	December 31, 2025	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
42	January 1, 2026	January 31, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
43	February 1, 2026	February 28, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
44	March 1, 2026	March 31, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
45	April 1, 2026	April 30, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
46	May 1, 2026	May 31, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
47	June 1, 2026	June 30, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
48	July 1, 2026	July 31, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
49	August 1, 2026	August 31, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
50	September 1, 2026	September 30, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
51	October 1, 2026	October 31, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
52	November 1, 2026	November 30, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

		2026					
53	December 1, 2026	December 31, 2026	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
54	January 1, 2027	January 31, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
55	February 1, 2027	February 28, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
56	March 1, 2027	March 31, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
57	April 1, 2027	April 30, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
58	May 1, 2027	May 31, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
59	June 1, 2027	June 30, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
60	July 1, 2027	July 31, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
61	August 1, 2027	August 31, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
62	September 1, 2027	September 30, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
63	October 1, 2027	October 31, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
64	November 1, 2027	November 30, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
65	December 1, 2027	December 31, 2027	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
66	January 1, 2028	January 31, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
67	February 1, 2028	February 29, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
68	March 1, 2028	March 31, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
69	April 1, 2028	April 30, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
70	May 1, 2028	May 31, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
71	June 1, 2028	June 30, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
72	July 1, 2028	July 31, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
73	August 1, 2028	August 31, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
74	September 1, 2028	September 30, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

75	October 1, 2028	October 31, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
76	November 1, 2028	November 30, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
77	December 1, 2028	December 31, 2028	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
78	January 1, 2029	January 31, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
79	February 1, 2029	February 28, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
80	March 1, 2029	March 31, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
81	April 1, 2029	April 30, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
82	May 1, 2029	May 31, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
83	June 1, 2029	June 30, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
84	July 1, 2029	July 31, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
85	August 1, 2029	August 31, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
86	September 1, 2029	September 30, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
87	October 1, 2029	October 31, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
88	November 1, 2029	November 30, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
89	December 1, 2029	December 31, 2029	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
90	January 1, 2030	January 31, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
91	February 1, 2030	February 28, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
92	March 1, 2030	March 31, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
93	April 1, 2030	April 30, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
94	May 1, 2030	May 31, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
95	June 1, 2030	June 30, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
96	July 1, 2030	July 31, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
97	August 1, 2030	August 31,	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

		2030					
98	September 1, 2030	September 30, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
99	October 1, 2030	October 31, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
100	November 1, 2030	November 30, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
101	December 1, 2030	December 31, 2030	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
102	January 1, 2031	January 31, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
103	February 1, 2031	February 28, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
104	March 1, 2031	March 31, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
105	April 1, 2031	April 30, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
106	May 1, 2031	May 31, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
107	June 1, 2031	June 30, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
108	July 1, 2031	July 31, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
109	August 1, 2031	August 31, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
110	September 1, 2031	September 30, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
111	October 1, 2031	October 31, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
112	November 1, 2031	November 30, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
113	December 1, 2031	December 31, 2031	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
114	January 1, 2032	January 31, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
115	February 1, 2032	February 29, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
116	March 1, 2032	March 31, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
117	April 1, 2032	April 30, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
118	May 1, 2032	May 31, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

119	June 1, 2032	June 30, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
120	July 1, 2032	July 31, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
121	August 1, 2032	August 31, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
122	September 1, 2032	September 30, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
123	October 1, 2032	October 31, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
124	November 1, 2032	November 30, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
125	December 1, 2032	December 31, 2032	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
126	January 1, 2033	January 31, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
127	February 1, 2033	February 28, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
128	March 1, 2033	March 31, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
129	April 1, 2033	April 30, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
130	May 1, 2033	May 31, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
131	June 1, 2033	June 30, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
132	July 1, 2033	July 31, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
133	August 1, 2033	August 31, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
134	September 1, 2033	September 30, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
135	October 1, 2033	October 31, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
136	November 1, 2033	November 30, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
137	December 1, 2033	December 31, 2033	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
138	January 1, 2034	January 31, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
139	February 1, 2034	February 28, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
140	March 1, 2034	March 31, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

141	April 1, 2034	April 30, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
142	May 1, 2034	May 31, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
143	June 1, 2034	June 30, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
144	July 1, 2034	July 31, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
145	August 1, 2034	August 31, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
146	September 1, 2034	September 30, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
147	October 1, 2034	October 31, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
148	November 1, 2034	November 30, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
149	December 1, 2034	December 31, 2034	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
150	January 1, 2035	January 31, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
151	February 1, 2035	February 28, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
152	March 1, 2035	March 31, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
153	April 1, 2035	April 30, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
154	May 1, 2035	May 31, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
155	June 1, 2035	June 30, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
156	July 1, 2035	July 31, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
157	August 1, 2035	August 31, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
158	September 1, 2035	September 30, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
159	October 1, 2035	October 31, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
160	November 1, 2035	November 30, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
161	December 1, 2035	December 31, 2035	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
162	January 1, 2036	January 31, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
163	February 1, 2036	February 29,	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

		2036					
164	March 1, 2036	March 31, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
165	April 1, 2036	April 30, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
166	May 1, 2036	May 31, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
167	June 1, 2036	June 30, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
168	July 1, 2036	July 31, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
169	August 1, 2036	August 31, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
170	September 1, 2036	September 30, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
171	October 1, 2036	October 31, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
172	November 1, 2036	November 30, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
173	December 1, 2036	December 31, 2036	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
174	January 1, 2037	January 31, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
175	February 1, 2037	February 28, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
176	March 1, 2037	March 31, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
177	April 1, 2037	April 30, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
178	May 1, 2037	May 31, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
179	June 1, 2037	June 30, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
180	July 1, 2037	July 31, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
181	August 1, 2037	August 31, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
182	September 1, 2037	September 30, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
183	October 1, 2037	October 31, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
184	November 1, 2037	November 30, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
185	December 1, 2037	December 31, 2037	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

186	January 1, 2038	January 31, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
187	February 1, 2038	February 28, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
188	March 1, 2038	March 31, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
189	April 1, 2038	April 30, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
190	May 1, 2038	May 31, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
191	June 1, 2038	June 30, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
192	July 1, 2038	July 31, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
193	August 1, 2038	August 31, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
194	September 1, 2038	September 30, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
195	October 1, 2038	October 31, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
196	November 1, 2038	November 30, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
197	December 1, 2038	December 31, 2038	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
198	January 1, 2039	January 31, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
199	February 1, 2039	February 28, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
200	March 1, 2039	March 31, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
201	April 1, 2039	April 30, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
202	May 1, 2039	May 31, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
203	June 1, 2039	June 30, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
204	July 1, 2039	July 31, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
205	August 1, 2039	August 31, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
206	September 1, 2039	September 30, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
207	October 1, 2039	October 31, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
208	November 1, 2039	November 30, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

		2039					
209	December 1, 2039	December 31, 2039	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
210	January 1, 2040	January 31, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
211	February 1, 2040	February 29, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
212	March 1, 2040	March 31, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
213	April 1, 2040	April 30, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
214	May 1, 2040	May 31, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
215	June 1, 2040	June 30, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
216	July 1, 2040	July 31, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
217	August 1, 2040	August 31, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
218	September 1, 2040	September 30, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
219	October 1, 2040	October 31, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
220	November 1, 2040	November 30, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
221	December 1, 2040	December 31, 2040	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
222	January 1, 2041	January 31, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
223	February 1, 2041	February 28, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
224	March 1, 2041	March 31, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
225	April 1, 2041	April 30, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
226	May 1, 2041	May 31, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
227	June 1, 2041	June 30, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
228	July 1, 2041	July 31, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
229	August 1, 2041	August 31, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
230	September 1, 2041	September 30, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

231	October 1, 2041	October 31, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
232	November 1, 2041	November 30, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
233	December 1, 2041	December 31, 2041	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
234	January 1, 2042	January 31, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
235	February 1, 2042	February 28, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
236	March 1, 2042	March 31, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
237	April 1, 2042	April 30, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
238	May 1, 2042	May 31, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
239	June 1, 2042	June 30, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
240	July 1, 2042	July 31, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
241	August 1, 2042	August 31, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
242	September 1, 2042	September 30, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
243	October 1, 2042	October 31, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
244	November 1, 2042	November 30, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
245	December 1, 2042	December 31, 2042	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
246	January 1, 2043	January 31, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
247	February 1, 2043	February 28, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
248	March 1, 2043	March 31, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
249	April 1, 2043	April 30, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
250	May 1, 2043	May 31, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
251	June 1, 2043	June 30, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
252	July 1, 2043	July 31, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
253	August 1, 2043	August 31,	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

		2043					
254	September 1, 2043	September 30, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
255	October 1, 2043	October 31, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
256	November 1, 2043	November 30, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
257	December 1, 2043	December 31, 2043	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
258	January 1, 2044	January 31, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
259	February 1, 2044	February 29, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
260	March 1, 2044	March 31, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
261	April 1, 2044	April 30, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
262	May 1, 2044	May 31, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
263	June 1, 2044	June 30, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
264	July 1, 2044	July 31, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
265	August 1, 2044	August 31, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
266	September 1, 2044	September 30, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
267	October 1, 2044	October 31, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
268	November 1, 2044	November 30, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
269	December 1, 2044	December 31, 2044	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
270	January 1, 2045	January 31, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
271	February 1, 2045	February 28, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
272	March 1, 2045	March 31, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
273	April 1, 2045	April 30, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
274	May 1, 2045	May 31, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

275	June 1, 2045	June 30, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
276	July 1, 2045	July 31, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
277	August 1, 2045	August 31, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
278	September 1, 2045	September 30, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
279	October 1, 2045	October 31, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
280	November 1, 2045	November 30, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
281	December 1, 2045	December 31, 2045	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
282	January 1, 2046	January 31, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
283	February 1, 2046	February 28, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
284	March 1, 2046	March 31, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
285	April 1, 2046	April 30, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
286	May 1, 2046	May 31, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
287	June 1, 2046	June 30, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
288	July 1, 2046	July 31, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
289	August 1, 2046	August 31, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
290	September 1, 2046	September 30, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
291	October 1, 2046	October 31, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
292	November 1, 2046	November 30, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
293	December 1, 2046	December 31, 2046	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
294	January 1, 2047	January 31, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
295	February 1, 2047	February 28, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
296	March 1, 2047	March 31, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

297	April 1, 2047	April 30, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
298	May 1, 2047	May 31, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
299	June 1, 2047	June 30, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
300	July 1, 2047	July 31, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
301	August 1, 2047	August 31, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
302	September 1, 2047	September 30, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
303	October 1, 2047	October 31, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
304	November 1, 2047	November 30, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
305	December 1, 2047	December 31, 2047	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
306	January 1, 2048	January 31, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
307	February 1, 2048	February 29, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
308	March 1, 2048	March 31, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
309	April 1, 2048	April 30, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
310	May 1, 2048	May 31, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
311	June 1, 2048	June 30, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
312	July 1, 2048	July 31, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
313	August 1, 2048	August 31, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
314	September 1, 2048	September 30, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
315	October 1, 2048	October 31, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
316	November 1, 2048	November 30, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
317	December 1, 2048	December 31, 2048	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
318	January 1, 2049	January 31, 2049	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
319	February 1, 2049	February 28,	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

		2049					
320	March 1, 2049	March 31, 2049	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
321	April 1, 2049	April 30, 2049	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
322	May 1, 2049	May 31, 2049	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
323	June 1, 2049	June 30, 2049	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
324	July 1, 2049	July 31, 2049	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
325	August 1, 2049	August 10, 2049	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

**Table 4**

	Target Utilities Consumption Rates			
Service Level	Natural Gas [m <sup>3</sup> ]	Electricity [kWh]	Propane Gas [m <sup>3</sup> ]	Potable Water [m <sup>3</sup> ]
Service Level 1	232,994.00	4,823,085.00	70.00	4,493.90
Service Level 2	232,994.00	4,864,407.24	70.00	4,493.90
Service Level 3	232,994.00	4,847,879.00	70.00	4,493.90
Service Level 4	232,994.00	4,880,477.00	70.00	4,493.90

**Table 5**

Utilities Unit Costs			
Natural Gas	Electricity	Propane Gas	Potable Water
[ per m <sup>3</sup> ]	[per kWh]	[per L]	[per m <sup>3</sup> ]
[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]	[\$[REDACTED]]

**Table 6 (Annual Natural Gas Consumption Adjustment)**

Item	Row Reference	Amounts
Target Consumption: Natural Gas <sup>(1)</sup>	[A]	●
Actual Consumption: Natural Gas <sup>(2)</sup>	[B]	●
Variance	[C] [REDACTED]	●
Unit Cost(s) <sup>(3)</sup>	[D]	\$●
Value of Variance	[E] = C * D	\$●
<b>Annual Natural Gas Consumption Adjustment: Payment to Project Co</b>	[F] [REDACTED]	\$●
<b>Annual Natural Gas Consumption Adjustment: Credit to City</b>	[F] [REDACTED]	\$●

- (1) As provided by Project Co based on Table 4 of Appendix A of this Schedule 19.
- (2) As provided by Project Co in the Monthly Utilities Consumption Reports.
- (3) As per Section 6.5 of Part B of this Schedule 19 and to include all different unit rates, to the extent applicable, to enable Project Co to calculate the value of the variance.

**Table 7 (Annual Electricity Consumption Adjustment)**

Item	Row Reference	Amounts
Target Consumption: Electricity <sup>(1)</sup>	[A]	●
Actual Consumption: Electricity <sup>(2)</sup>	[B]	●
Variance	[C] [REDACTED]	●
Unit Cost(s) <sup>(3)</sup>	[D]	\$●
Value of Variance	[E] = C * D	\$●
<b>Annual Electricity Consumption Adjustment: Payment to Project Co</b>	[F] [REDACTED]	\$●
<b>Annual Electricity Consumption Adjustment: Credit to City</b>	[F] [REDACTED]	\$●

- (1) As provided by Project Co based on Table 4 of Appendix A of this Schedule 19.
- (2) As provided by Project Co in the Monthly Utilities Consumption Reports.
- (3) As per Section 6.5 of Part B of this Schedule 19 and to include all different unit rates, to the extent applicable, to enable Project Co to calculate the value of the variance.

**Table 8 (Annual Propane Gas Consumption Adjustment)**

Item	Row Reference	Amounts
Target Consumption: Propane Gas <sup>(1)</sup>	[A]	●
Actual Consumption: Propane Gas <sup>(2)</sup>	[B]	●
Variance	[C] [REDACTED]	●
Unit Cost(s) <sup>(3)</sup>	[D]	\$●
Value of Variance	[E] = C * D	\$●
<b>Annual Propane Gas Consumption Adjustment: Payment to Project Co</b>	[F] [REDACTED]	\$●
<b>Annual Propane Gas Consumption Adjustment: Credit to City</b>	[F] [REDACTED]	\$●

- (1) As provided by Project Co based on Table 4 of Appendix A of this Schedule 19.
- (2) As provided by Project Co in the Monthly Utilities Consumption Reports.
- (3) As per Section 6.5 of Part B of this Schedule 19 and to include all different unit rates, to the extent applicable, to enable Project Co to calculate the value of the variance.

**Table 9 (Annual Potable Water Consumption Adjustment)**

<b>Item</b>	<b>Row Reference</b>	<b>Amounts</b>
Target Consumption: Potable Water <sup>(1)</sup>	[A]	●
Actual Consumption: Potable Water <sup>(2)</sup>	[B]	●
Variance	[C] [REDACTED]	●
Unit Cost(s) <sup>(3)</sup>	[D]	\$●
Value of Variance	[E] = C * D	\$●
<b>Annual Potable Water Consumption Adjustment: Payment to Project Co</b>	[F] [REDACTED]	\$●
<b>Annual Potable Water Consumption Adjustment: Credit to City</b>	[F] [REDACTED]	\$●

- (1) As provided by Project Co based on Table 4 of Appendix A of this Schedule 19.
- (2) As provided by Project Co in the Monthly Utilities Consumption Reports.
- (3) As per Section 6.5 of Part B of this Schedule 19 and to include all different unit rates, to the extent applicable, to enable Project Co to calculate the value of the variance.

**Table 10 (SPV<sub>1</sub> Costs for Calculation of Annual Service Payment)**

<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>
Contract Month (Start)	Contract Month (End)	Amount (in Inflation Base Date prices)
1	12	\$[REDACTED]
13	24	\$[REDACTED]
25	36	\$[REDACTED]
37	48	\$[REDACTED]

<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>
Contract Month (Start)	Contract Month (End)	Amount (in Inflation Base Date prices)
49	60	[\$REDACTED]
61	72	[\$REDACTED]
73	84	[\$REDACTED]
85	96	[\$REDACTED]
97	108	[\$REDACTED]
109	120	[\$REDACTED]
121	132	[\$REDACTED]
133	144	[\$REDACTED]
145	156	[\$REDACTED]
157	168	[\$REDACTED]
169	180	[\$REDACTED]
181	192	[\$REDACTED]
193	204	[\$REDACTED]
205	216	[\$REDACTED]
217	228	[\$REDACTED]
229	240	[\$REDACTED]
241	252	[\$REDACTED]
253	264	[\$REDACTED]
265	276	[\$REDACTED]
277	288	[\$REDACTED]
289	300	[\$REDACTED]
301	312	[\$REDACTED]

<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>
Contract Month (Start)	Contract Month (End)	Amount (in Inflation Base Date prices)
313	324	<b>[\$REDACTED]</b>

**APPENDIX B: DEDUCTION FACTORS**

**TRAIN KILOMETRES AVAILABILITY FAILURE DEDUCTION - TABLE 1**

Availability Ratio	Deduction Factor
100.00%	[REDACTED]%
99.90%	[REDACTED]%
99.80%	[REDACTED]%
99.70%	[REDACTED]%
99.60%	[REDACTED]%
99.50%	[REDACTED]%
99.40%	[REDACTED]%
99.30%	[REDACTED]%
99.20%	[REDACTED]%
99.10%	[REDACTED]%
99.00%	[REDACTED]%
98.90%	[REDACTED]%
98.80%	[REDACTED]%
98.70%	[REDACTED]%
98.60%	[REDACTED]%
98.50%	[REDACTED]%
98.40%	[REDACTED]%
98.30%	[REDACTED]%
98.20%	[REDACTED]%
98.10%	[REDACTED]%
98.00%	[REDACTED]%
97.90%	[REDACTED]%
97.80%	[REDACTED]%
97.70%	[REDACTED]%
97.60%	[REDACTED]%
97.50%	[REDACTED]%
97.40%	[REDACTED]%

Availability Ratio	Deduction Factor
97.30%	[REDACTED]%
97.20%	[REDACTED]%
97.10%	[REDACTED]%
97.00%	[REDACTED]%
96.90%	[REDACTED]%
96.80%	[REDACTED]%
96.70%	[REDACTED]%
96.60%	[REDACTED]%
96.50%	[REDACTED]%
96.40%	[REDACTED]%
96.30%	[REDACTED]%
96.20%	[REDACTED]%
96.10%	[REDACTED]%
96.00%	[REDACTED]%
95.90%	[REDACTED]%
95.80%	[REDACTED]%
95.70%	[REDACTED]%
95.60%	[REDACTED]%
95.50%	[REDACTED]%
95.40%	[REDACTED]%
95.30%	[REDACTED]%
95.20%	[REDACTED]%
95.10%	[REDACTED]%
95.00%	[REDACTED]%
94.90%	[REDACTED]%
94.80%	[REDACTED]%
94.70%	[REDACTED]%

Availability Ratio	Deduction Factor
94.60%	[REDACTED]%
94.50%	[REDACTED]%
94.40%	[REDACTED]%
94.30%	[REDACTED]%
94.20%	[REDACTED]%
94.10%	[REDACTED]%
94.00%	[REDACTED]%
93.90%	[REDACTED]%
93.80%	[REDACTED]%
93.70%	[REDACTED]%
93.60%	[REDACTED]%
93.50%	[REDACTED]%
93.40%	[REDACTED]%
93.30%	[REDACTED]%
93.20%	[REDACTED]%
93.10%	[REDACTED]%
93.00%	[REDACTED]%
92.90%	[REDACTED]%
92.80%	[REDACTED]%
92.70%	[REDACTED]%
92.60%	[REDACTED]%
92.50%	[REDACTED]%
92.40%	[REDACTED]%
92.30%	[REDACTED]%
92.20%	[REDACTED]%
92.10%	[REDACTED]%
92.00%	[REDACTED]%

**TRAIN KILOMETRES AVAILABILITY FAILURE DEDUCTION - TABLE 1 (CONT'D)**

Availability Ratio	Deduction Factor
91.90%	[REDACTED]%
91.80%	[REDACTED]%
91.70%	[REDACTED]%
91.60%	[REDACTED]%
91.50%	[REDACTED]%
91.40%	[REDACTED]%
91.30%	[REDACTED]%
91.20%	[REDACTED]%
91.10%	[REDACTED]%
91.00%	[REDACTED]%
90.90%	[REDACTED]%
90.80%	[REDACTED]%
90.70%	[REDACTED]%
90.60%	[REDACTED]%
90.50%	[REDACTED]%
90.40%	[REDACTED]%
90.30%	[REDACTED]%
90.20%	[REDACTED]%
90.10%	[REDACTED]%
90.00%	[REDACTED]%
89.90%	[REDACTED]%
89.80%	[REDACTED]%
89.70%	[REDACTED]%
89.60%	[REDACTED]%
89.50%	[REDACTED]%
89.40%	[REDACTED]%
89.30%	[REDACTED]%

Availability Ratio	Deduction Factor
89.20%	[REDACTED]%
89.10%	[REDACTED]%
89.00%	[REDACTED]%
88.90%	[REDACTED]%
88.80%	[REDACTED]%
88.70%	[REDACTED]%
88.60%	[REDACTED]%
88.50%	[REDACTED]%
88.40%	[REDACTED]%
88.30%	[REDACTED]%
88.20%	[REDACTED]%
88.10%	[REDACTED]%
88.00%	[REDACTED]%
87.90%	[REDACTED]%
87.80%	[REDACTED]%
87.70%	[REDACTED]%
87.60%	[REDACTED]%
87.50%	[REDACTED]%
87.40%	[REDACTED]%
87.30%	[REDACTED]%
87.20%	[REDACTED]%
87.10%	[REDACTED]%
87.00%	[REDACTED]%
86.90%	[REDACTED]%
86.80%	[REDACTED]%
86.70%	[REDACTED]%
86.60%	[REDACTED]%

Availability Ratio	Deduction Factor
86.50%	[REDACTED]%
86.40%	[REDACTED]%
86.30%	[REDACTED]%
86.20%	[REDACTED]%
86.10%	[REDACTED]%
86.00%	[REDACTED]%
85.90%	[REDACTED]%
85.80%	[REDACTED]%
85.70%	[REDACTED]%
85.60%	[REDACTED]%
85.50%	[REDACTED]%
85.40%	[REDACTED]%
85.30%	[REDACTED]%
85.20%	[REDACTED]%
85.10%	[REDACTED]%
85.00%	[REDACTED]%
84.90%	[REDACTED]%
84.80%	[REDACTED]%
84.70%	[REDACTED]%
84.60%	[REDACTED]%
84.50%	[REDACTED]%
84.40%	[REDACTED]%
84.30%	[REDACTED]%
84.20%	[REDACTED]%
84.10%	[REDACTED]%
84.00%	[REDACTED]%
83.90%	[REDACTED]%

**TRAIN KILOMETRES AVAILABILITY FAILURE DEDUCTION - TABLE 1 (CONT'D)**

Availability Ratio	Deduction Factor
83.80%	[REDACTED]%
83.70%	[REDACTED]%
83.60%	[REDACTED]%
83.50%	[REDACTED]%
83.40%	[REDACTED]%
83.30%	[REDACTED]%
83.20%	[REDACTED]%
83.10%	[REDACTED]%
83.00%	[REDACTED]%
82.90%	[REDACTED]%
82.80%	[REDACTED]%
82.70%	[REDACTED]%
82.60%	[REDACTED]%
82.50%	[REDACTED]%
82.40%	[REDACTED]%
82.30%	[REDACTED]%
82.20%	[REDACTED]%
82.10%	[REDACTED]%
82.00%	[REDACTED]%
81.90%	[REDACTED]%
81.80%	[REDACTED]%
81.70%	[REDACTED]%
81.60%	[REDACTED]%
81.50%	[REDACTED]%
81.40%	[REDACTED]%
81.30%	[REDACTED]%
81.20%	[REDACTED]%

Availability Ratio	Deduction Factor
81.10%	[REDACTED]%
81.00%	[REDACTED]%
80.90%	[REDACTED]%
80.80%	[REDACTED]%
80.70%	[REDACTED]%
80.60%	[REDACTED]%
80.50%	[REDACTED]%
80.40%	[REDACTED]%
80.30%	[REDACTED]%
80.20%	[REDACTED]%
80.10%	[REDACTED]%
80.00%	[REDACTED]%
79.90%	[REDACTED]%
79.80%	[REDACTED]%
79.70%	[REDACTED]%
79.60%	[REDACTED]%
79.50%	[REDACTED]%
79.40%	[REDACTED]%
79.30%	[REDACTED]%
79.20%	[REDACTED]%
79.10%	[REDACTED]%
79.00%	[REDACTED]%
78.90%	[REDACTED]%
78.80%	[REDACTED]%
78.70%	[REDACTED]%
78.60%	[REDACTED]%
78.50%	[REDACTED]%

Availability Ratio	Deduction Factor
78.40%	[REDACTED]%
78.30%	[REDACTED]%
78.20%	[REDACTED]%
78.10%	[REDACTED]%
78.00%	[REDACTED]%
77.90%	[REDACTED]%
77.80%	[REDACTED]%
77.70%	[REDACTED]%
77.60%	[REDACTED]%
77.50%	[REDACTED]%
77.40%	[REDACTED]%
77.30%	[REDACTED]%
77.20%	[REDACTED]%
77.10%	[REDACTED]%
77.00%	[REDACTED]%
76.90%	[REDACTED]%
76.80%	[REDACTED]%
76.70%	[REDACTED]%
76.60%	[REDACTED]%
76.50%	[REDACTED]%
76.40%	[REDACTED]%
76.30%	[REDACTED]%
76.20%	[REDACTED]%
76.10%	[REDACTED]%
76.00%	[REDACTED]%
75.90%	[REDACTED]%
75.80%	[REDACTED]%

**TRAIN KILOMETRES AVAILABILITY FAILURE DEDUCTION - TABLE 1 (CONT'D)**

Availability Ratio	Deduction Factor
75.70%	[REDACTED]%
75.60%	[REDACTED]%
75.50%	[REDACTED]%
75.40%	[REDACTED]%
75.30%	[REDACTED]%
75.20%	[REDACTED]%
75.10%	[REDACTED]%
75.00%	[REDACTED]%
74.90%	[REDACTED]%
74.80%	[REDACTED]%
74.70%	[REDACTED]%
74.60%	[REDACTED]%
74.50%	[REDACTED]%
74.40%	[REDACTED]%
74.30%	[REDACTED]%
74.20%	[REDACTED]%
74.10%	[REDACTED]%
74.00%	[REDACTED]%
73.90%	[REDACTED]%
73.80%	[REDACTED]%
73.70%	[REDACTED]%
73.60%	[REDACTED]%
73.50%	[REDACTED]%
73.40%	[REDACTED]%
73.30%	[REDACTED]%
73.20%	[REDACTED]%
73.10%	[REDACTED]%

Availability Ratio	Deduction Factor
73.00%	[REDACTED]%
72.90%	[REDACTED]%
72.80%	[REDACTED]%
72.70%	[REDACTED]%
72.60%	[REDACTED]%
72.50%	[REDACTED]%
72.40%	[REDACTED]%
72.30%	[REDACTED]%
72.20%	[REDACTED]%
72.10%	[REDACTED]%
72.00%	[REDACTED]%
71.90%	[REDACTED]%
71.80%	[REDACTED]%
71.70%	[REDACTED]%
71.60%	[REDACTED]%
71.50%	[REDACTED]%
71.40%	[REDACTED]%
71.30%	[REDACTED]%
71.20%	[REDACTED]%
71.10%	[REDACTED]%
71.00%	[REDACTED]%
70.90%	[REDACTED]%
70.80%	[REDACTED]%
70.70%	[REDACTED]%
70.60%	[REDACTED]%
70.50%	[REDACTED]%
70.40%	[REDACTED]%

Availability Ratio	Deduction Factor
70.30%	[REDACTED]%
70.20%	[REDACTED]%
70.10%	[REDACTED]%
70.00%	[REDACTED]%

**APPENDIX C: FAILURE POINTS**

**Section 1. Failure Points Applicable to Train Kilometres Availability Failures**

1.1 Failure Points shall be awarded in each Contract Month of the Maintenance Period based on the Aggregate Train Kilometres Availability Ratio calculated for that Contract Month, in accordance with the table, below. Failure Points shall not be awarded in respect of any Train Kilometres Availability Failures that are caused by NVSC Warranty Failures.

<b>Aggregate Train Kilometres Availability Ratio for Contract Month <i>n</i></b>	<b>Failure Points Awarded for Contract Month <i>n</i></b>
99.0% to 100.0%	[REDACTED]
98.5% to 98.9%	[REDACTED]
98.0% to 98.4%	[REDACTED]
97.5% to 97.9%	[REDACTED]
97.0% to 97.4%	[REDACTED]
96.5% to 96.9%	[REDACTED]
96.0% to 96.4%	[REDACTED]
95.5% to 95.9%	[REDACTED]
95.0% to 95.4%	[REDACTED]
94.5% to 94.9%	[REDACTED]
94.0% to 94.4%	[REDACTED]
93.5% to 93.9%	[REDACTED]
93.0% to 93.4%	[REDACTED]
92.5% to 92.9%	[REDACTED]
92.0% to 92.4%	[REDACTED]
91.5% to 91.9%	[REDACTED]
91.0% to 91.4%	[REDACTED]
90.5% to 90.9%	[REDACTED]
90.0% to 90.4%	[REDACTED]
89.9% or below	[REDACTED]

**Section 2. Failure Points Applicable to System Events**

2.1 Failure Points shall be awarded in each Contract Month based on any System Events occurring during that Contract Month, in accordance with the table, below.

System Event	Failure Points Applied
<p>On any single Weekday during a Contract Month, the Peak Period Train Kilometres Availability Ratio for either (a) morning Peak Period service or (b) afternoon Peak Period service is less than [REDACTED]%.</p>	<p>[REDACTED] per occurrence</p> <p>For clarity, each Peak Period which fails to meet the [REDACTED]% service standard shall result in awarding [REDACTED] Failure Points, such that Project Co could be awarded [REDACTED] Failure Points in respect of morning Peak Period service and a further [REDACTED] Failure Points in respect of afternoon Peak Period service.</p>
<p>On any single day during a Contract Month, the Aggregate Train Kilometres Availability Ratio for that day is less than [REDACTED]%.</p>	<p>[REDACTED] per occurrence</p>
<p>On any single day during a Contract Month, an inability to provide train service to a terminal station (for clarity, this means Bayview Station, Limebank Station or Airport Station) for any duration that is in excess of a cumulative 36 minutes during that day, either on a continuous or intermittent basis.</p>	<p>[REDACTED] per occurrence per Station</p> <p>In the event that the same failure results in Failure Points applied due to this trigger as well as either of the aforementioned triggers outlined in this table, only the Failure Points resulting from a System Event(s) due to the aforementioned triggers shall be applied.</p>

2.2 To the extent that Failure Points are awarded for System Events, no Failure Points for directly corresponding Quality Failures or Service Failures shall be awarded in addition to the Failure Points awarded for System Events. Failure Points shall not be awarded in respect of any System Events that are caused by NVSC Warranty Failures.

**Section 3. Failure Points Applicable to Quality Failures and Service Failures**

<b>Category</b>	<b>Failure Points</b>	<b>Application</b>
Minor Quality Failure	[REDACTED]	Per Quality Failure
Medium Quality Failure	[REDACTED]	
Major Quality Failure	[REDACTED]	
Minor Service Failure	[REDACTED]	Per Service Failure
Medium Service Failure	[REDACTED]	
Major Service Failure	[REDACTED]	

## SCHEDULE 20

### CONSTRUCTION PERIOD PAYMENTS

#### 1. INTERPRETATION AND DEFINITIONS

##### 1.1 Interpretation

- (a) In this Schedule 20, and for the purposes of all calculations pursuant to this Schedule 20, all amounts cited in respect of capital costs and/or costs in respect of the construction of the Works are amounts net of any CLA holdback.

##### 1.2 Definitions

Any capitalized term not defined in this Schedule 20 shall have the meaning given to such term in the Project Agreement. In this Schedule 20, unless the context otherwise requires:

- (a) “**Actual Eligible Payment Period Amount**” means, for each Payment Period, an amount equal to (the Total Capital Cost Incurred to Date minus the Initial Capital Investment Amount).
- (b) “**Attachment A**”, “**Attachment B**”, “**Attachment C**”, “**Attachment D**”, “**Attachment E**”, “**Attachment F**” and “**Attachment G**” mean, respectively, Attachment A, Attachment B, Attachment C, Attachment D, Attachment E, Attachment F and Attachment G to this Schedule 20.
- (c) “**Capital Costs**” means costs incurred by Project Co in connection with the Project as reflected in the Financial Model that are not Project Co Soft Costs. For clarity, Capital Costs shall not include Revenue Vehicle Contract Costs.
- (d) “**Construction Period Deduction**” means a deduction made from the Substantial Completion Payment in accordance with Section 6.1.
- (e) “**Construction Period Event**” means an incident or state of affairs that does not meet or comply with the Construction Period Performance Criteria, which is capable of becoming a Construction Period Quality Failure.
- (f) “**Construction Period Failure Category**” means the failure category described in the fourth column of the tables in Attachment E.
- (g) “**Construction Period Failure Type**” means the failure type described in the third column of the tables in Attachment E.
- (h) “**Construction Period Month**” means a calendar month during the Construction Period, except that:
- (i) the first Construction Period Month of the Construction Period shall run from Financial Close until the end of the calendar month in which Financial Close occurs; and
  - (ii) the last Construction Period Month of the Construction Period shall run from the first day of the calendar month in which the Final Completion Date falls until the Final Completion Date.

- (i) “**Construction Period Payment**” means a payment, which shall be no more frequent than once a month, calculated in accordance with this Schedule 20.
- (j) “**Construction Period Payment Application**” has the meaning set out in Section 3.3(a).
- (k) “**Construction Period Performance Criteria**” means the level of performance (as set out in the column entitled “Requirements to be met” in Attachment E) that Project Co must achieve to avoid a Construction Period Event for a failure to achieve compliance with the applicable Project Agreement requirement.
- (l) “**Construction Period Quality Failure**” means any failure by Project Co to comply with the requirements set out in the column entitled “Requirements to be met” corresponding to the Construction Period Performance Criteria designated as Construction Period Failure Type “CPQF” in Attachment E.
- (m) “**Construction Period Quality Failure Deduction**” has the meaning given in Section 6.2(a).
- (n) “**Contested Non-Conforming Works**” means Works in respect of which the City has given Notice to Project Co, pursuant to Section 59 of the Project Agreement (but not a Non-Conformance Report initiated by the City pursuant to Schedule 11 – Integrated Management System Requirements), that, in the opinion of the City, such Works are not in accordance with the Project Agreement, and Project Co has asserted that, in Project Co’s opinion, such Works are in accordance with the Project Agreement.
- (o) “**Credit Rules**” means the rules set out in Attachment F.
- (p) “**Critical Construction Period Quality Failure**” means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Critical” in Attachment E.
- (q) “**Critical Qualifying NCR**” means a Qualifying NCR raised by the City or Project Co on a Critical Non-Conformance that requires all or any portion of Project Co Accepted Works to be removed or repeated because such Project Co Accepted Works have, or would reasonably be expected to have, a significantly adverse or materially adverse impact on:
  - (i) the safety of the Project, the environment, System Users or the public;
  - (ii) statutory and regulatory requirements;
  - (iii) the quality of the Works; or
  - (iv) the durability of the Works.
- (r) “**Critical Qualifying Process NCR**” means a Qualifying Process NCR raised by the City or Project Co on a Non-Conformance that requires physical progress on the Works to be stopped for longer than twenty-four (24) hours.
- (s) “**Earned Value**” means the budgeted cost of work performed in respect of each Payment Period, measured using the Earned Value Measurement Techniques and Performance Measurement Baseline.
- (t) “**Earned Value Measurement Techniques**” means the techniques used to measure Earned Value established by Project Co and agreed with the Independent Certifier in accordance with the

- “Practice Standard for Earned Value Management” (2<sup>nd</sup> Edition, published in 2011 by the Project Management Institute, Inc.).
- (u) **“Earned Value Progress Ratio”** means, as of a Payment Calculation Date, the aggregate total Earned Value achieved by Project Co and certified by the Independent Certifier divided by the Projected Earned Value (Cumulative).
  - (v) **“Financing”** means the financing with the Lenders to finance the costs of the Project pursuant to the Lending Agreements.
  - (w) **“Hold Point”** has the meaning given in Schedule 11 – Integrated Management System Requirements.
  - (x) **“IC Construction Period Payment Authorization Certificate”** has the meaning set out in Section 3.3(c).
  - (y) **“IC Initial Capital Investment Certificate”** has the meaning set out in Section 3.2(b)(iv).
  - (z) **“Initial Capital Investment”** means the threshold point at which,
    - (i) the Initial Capital Investment Amount has been invested by Project Co in respect of the Project and has been advanced to Project Co either through sources of equity capital and/or the Financing; and
    - (ii) the sum of (A) the Earned Value of the Works achieved by Project Co and certified by the Independent Certifier in the Investment Certificate and (B) the Project Co Soft Costs incurred by Project Co are equal to or greater than the Initial Capital Investment Amount.
  - (aa) **“Initial Capital Investment Amount”** means \$[REDACTED].
  - (bb) **“Initial Capital Investment Date”** means the date on which the Initial Capital Investment is achieved, as certified by the Independent Certifier in the IC Initial Capital Investment Certificate.
  - (cc) **“Initial Capital Investment Date Notice”** has the meaning set out in Section 3.2(a)(i).
  - (dd) **“Lender Advance Confirmations”** has the meaning set out in Section 3.1(a).
  - (ee) **“Lender Advances”** has the meaning set out in Section 3.1(a)(i).
  - (ff) **“Maintained Private Capital”** means the Private Capital Invested that is unpaid following receipt by Project Co of the Substantial Completion Payment which shall be no less than \$[REDACTED].
  - (gg) **“Medium Construction Period Quality Failure”** means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Medium” in Attachment E.
  - (hh) **“Medium Qualifying NCR”** means a Qualifying NCR raised by the City or Project Co on a Medium Non-Conformance for all or any portion of Project Co Accepted Works that is not a Critical Qualifying NCR.

- (ii) “**Medium Qualifying Process NCR**” means a Qualifying Process NCR raised by the City or Project Co on a Non-Conformance that requires changes to a Works Submittal being used by Project Co in its delivery of the Works that is not a Critical Qualifying NCR.
- (jj) “**Minor Construction Period Quality Failure**” means a Construction Period Quality Failure designated as a Construction Period Failure Category of “Minor” in Attachment E.
- (kk) “**Minor Construction Period Quality Failure Tolerance**” has the meaning given in Section 6.3(a).
- (ll) “**Minor Qualifying NCR**” means a Qualifying NCR raised by the City on a Non-Conformance on all or any portion of the Works that have been inspected and tested and approved by Project Co at a Witness Point or Hold Point, pursuant to the relevant Inspection and Test Plan, but are not yet Project Co Accepted Works. For clarity, a Minor Qualifying NCR does not mean a Qualifying NCR raised by Project Co.
- (mm) “**Minor Qualifying Process NCR**” means a Qualifying Process NCR raised by the City on a Minor Non-Conformance that is not a Critical Qualifying Process NCR or Medium Qualifying Process NCR. For clarity, a Minor Qualifying Process NCR does not mean a Qualifying Process NCR raised by Project Co.
- (nn) “**Mobilization Credit**” has the meaning given in Section 1.3(e) of Attachment F.
- (oo) “**Monthly Non-Conformance Report**” means the monthly report to be submitted by Project Co in accordance with Section 2.11 of Schedule 11 – Integrated Management System Requirements.
- (pp) “**NCR**” means a Non-Conformance Report.
- (qq) “**Non-Conformance**” has the meaning given in Schedule 11- Integrated Management System Requirements.
- (rr) “**Non-Conformance Report**” has the meaning given in Schedule 11 – Integrated Management System Requirements.
- (ss) “**Payment Application Requirements**” has the meaning set out in Section 3.3(a).
- (tt) “**Payment Calculation Date**” means the date set out in Column 2 of Table A that is the date to be used as the “Payment Calculation Date” for the applicable Construction Period Payment, subject to Section 2.2(a)(iii).
- (uu) “**Payment Period**” means the payment period(s) identified in Column 1 of Table A.
- (vv) “**Performance Measurement Baseline**” is the cost loaded Works Schedule, at detailed activity level, that has achieved “NO COMMENT” or “MINOR COMMENT” status in accordance with Section 22 of the Project Agreement, as amended from time to time by the parties in accordance with Section 22 of the Project Agreement.
- (ww) “**Private Capital Invested**” means the total amount of Financing and equity capital advanced and utilized in the Project to fund the Works, comprising the aggregate of all Project Co Funding Amounts and the Initial Capital Investment Amount.

- (xx) **“Project Co Accepted Works”** means all physical elements of the Works that have been accepted by Project Co as meeting its acceptance criteria for those Works, pursuant to its Inspection and Test Plan.
- (yy) **“Project Co Construction Period Payment Documentation”** has the meaning set out in Section 3.1(c).
- (zz) **“Project Co Funding Amount”** means, for each Payment Period, an amount equal to [REDACTED]% of the Actual Eligible Payment Period Amount for the applicable Payment Period.
- (aaa) **“Project Co Officer Construction Period Payment Certificate”** has the meaning set out in Section 3.1(d).
- (bbb) **“Project Co Officer Initial Capital Investment Certificate”** means the officer certificate referenced in Section 3.2(a)(iv).
- (ccc) **“Project Co Soft Costs”** means the special purpose vehicle costs, accounting, tax, audit costs, rating agency fees, bid fee cost, independent certifier costs, pre-construction costs (e.g. bid pursuit costs, financial advisor, legal advisor, insurance advisor), other ancillary fees, interest and fees paid in connection with the Financing, in each case, in accordance with and as reflected in the Financial Model and incurred by Project Co in connection with the Project (or with respect to the interest or fees paid in connection with the Financing for purposes of calculating the Actual Eligible Payment Period Amount or certifying the Initial Capital Investment, actually incurred by Project Co and verified pursuant to the Lender Advance Confirmations).
- (ddd) **“Projected Capital Costs”** means, in respect of each Payment Period, the amount set out in Column 3A of Table A.
- (eee) **“Projected Construction Period Payment”** means, in respect of each Construction Period Payment, the amount set out in Column 9 of Table A, which shall equal [REDACTED]% of the Projected Eligible Construction Period Payment for the applicable Payment Period.
- (fff) **“Projected Construction Period Payment (Cumulative)”** means, in respect of each Construction Period Payment, the amount set out in Column 10 of Table A.
- (ggg) **“Projected Earned Value”** means, in respect of each Construction Period Payment, the amount set out in Column 3B of Table A.
- (hhh) **“Projected Eligible Construction Period Payment”** means, in respect of each Construction Period Payment, the amount set out in Column 4 of Table A, which shall be the sum of the Projected Project Co Soft Costs and Projected Capital Costs calculated cumulatively less the Initial Capital Investment Amount.
- (iii) **“Projected Eligible Construction Period Payment (Cumulative)”** means, in respect of each Construction Period Payment, the amount set out in Column 5 of Table A.
- (jjj) **“Projected Project Co Funding Amount”** means, in respect of each Payment Period, the amount set out in Column 6 of Table A, which shall equal [REDACTED]% of the Projected Eligible Construction Period Payment for the applicable Payment Period.

- (kkk) **“Projected Project Co Funding Amount (Cumulative)”** means, in respect of each Payment Period, the amount set out in Column 7 of Table A.
- (lll) **“Projected Project Co Soft Costs”** means, in respect of each Payment Period, the amount set out in Column 3 of Table A.
- (mmm) **“Projected Total Capital Cost Incurred to Date”** means, in respect of each Payment Period, the amount set out in Column 8 of Table A which shall be the sum of Projected Project Co Soft Costs and Projected Capital Costs.
- (nnn) **“Qualifying NCR”** means a Non-Conformance Report in accordance with Schedule 11 – Integrated Management System Requirements regarding any Non-Conformance discovered in the physical elements of any of the Works:
- (i) for which Project Co has continued, or has stated the intention to continue, construction of the Works past the relevant Witness Point or Hold Point in contravention of the Inspection and Test Plan; or
  - (ii) following Project Co’s stated completion of a task or component and Project Co’s statement that the requirements for Design and Construction Certification have been met in respect of such Works and such Works have been inspected and tested by Project Co pursuant to the Inspection and Test Plan,
- and shall include “Critical Qualifying NCR”, “Medium Qualifying NCR” or “Minor Qualifying NCR”.
- (ooo) **“Qualifying Process NCR”** means a Non-Conformance Report in accordance with Schedule 11 – Integrated Management System Requirements regarding any Non-Conformance discovered in the Works that is not a physical element of the Works as described in Attachment E, and shall include “Critical Qualifying Process NCR”, “Medium Qualifying Process NCR” or “Minor Qualifying Process NCR”.
- (ppp) **“Remedial Period”** means the period allowed for remedying a Construction Period Quality Failure in accordance with the fifth column of the tables in Attachment E.
- (qqq) **“Repeated Minor Construction Period Quality Failure”** has the meaning set out in Section 6.3(c).
- (rrr) **“Request for Payment”** has the meaning set out in Section 3.3(a)(i).
- (sss) **“Scheduled Initial Capital Investment Date”** means June 30, 2019.
- (ttt) **“Supplementary Payment Calculation Date”** has the meaning set out in Section 2.3(a).
- (uuu) **“Table A”** means the Table A set out in Attachment A.
- (vvv) **“Total Capital Cost”** means \$[REDACTED] (and shall exclude Revenue Vehicle Contract Costs)
- (www) **“Total Capital Cost Incurred to Date”** means the cumulative amount of the Total Capital Cost determined as of each Payment Calculation Date as the sum of:

- (i) the cumulative aggregate of Capital Costs up to, and including, the Payment Period as set out in Table A, multiplied by the Earned Value Progress Ratio; and
  - (ii) the cumulative aggregate of Project Co Soft Costs up to, and including, the Payment Period as set out in Table A.
- (xxx) “**Unpaid Construction Period Payment**” means any portion of the Projected Eligible Construction Period Payment (Cumulative) set out in Table A that is unpaid after the last Construction Period Payment set out in Table A.
- (yyy) “**Witness Point**” has the meaning given in Schedule 11 – Integrated Management System Requirements.

## 2. PAYMENTS BY THE CITY

### 2.1 Obligation to Pay

(a) The City shall pay to Project Co:

- (i) the Construction Period Payments; and
- (ii) the Substantial Completion Payment,

in accordance with the Project Agreement and this Schedule 20.

### 2.2 Calculation of the Construction Period Payments

(a) Each Construction Period Payment shall be calculated in accordance with the following:

- (i) the City shall not be obliged to make any Construction Period Payment until Project Co has achieved the Initial Capital Investment, as certified by the Independent Certifier;
- (ii) subject to Section 2.2(a)(iii) and Section 2.3, the number of Construction Period Payments to be paid by the City is set out in Table A;
- (iii) notwithstanding the first Payment Calculation Date set out in Table A, the first actual Payment Calculation Date shall be the later of,
  - (A) the first Payment Calculation Date set out in Table A; or
  - (B) the first Payment Calculation Date set out in Table A that occurs on or after the Initial Capital Investment Date,

and each Payment Calculation Date thereafter shall occur on the applicable Payment Calculation Date set out in Table A;

(iv) each Construction Period Payment shall equal the lesser of:

- (A) the Projected Construction Period Payment (Cumulative) set out in Table A for the applicable Payment Period less the total value of all Construction Period Payments made by the City prior to the date of calculation; or
- (B) the Actual Eligible Payment Period Amount minus the Project Co Funding Amount prior to and including the applicable Payment Period less the total value of all Construction Period Payments made by the City prior to the date of calculation.

### 2.3 Payment of Unpaid Construction Period Payment Prior to Substantial Completion

(a) After the expiration of all Payment Calculation Dates set out in Column 2 of Table A, Project Co may identify additional Payment Calculation Dates (each a “**Supplementary Payment Calculation Date**”) for the purposes of seeking payment of any Unpaid Construction Period Payment, or any portion thereof, in accordance with the following:

- (i) Project Co shall provide at least 30 days' Notice to the City of each Supplementary Payment Calculation Date;
- (ii) All provisions of this Schedule 20 with respect to the application for, and calculation and Independent Certifier review of, a Construction Period Payment shall apply mutatis mutandis to an application for, and calculation and Independent Certifier review of, a payment pursuant to this Section 2.3;
- (iii) Each Supplementary Payment Calculation Date shall occur no more than once a month; and
- (iv) any Unpaid Construction Period Payment, or any portion thereof, not paid pursuant to this Section 2.3 shall be paid in accordance with Section 4.2.

**2.4 [Intentionally Deleted].**

**2.5 Calculation of the Substantial Completion Payment**

- (a) Subject to Section 2.3, the payment to be made by the City following Substantial Completion or Interim Substantial Completion, as the case may be, shall be calculated in accordance with the following:
  - (i) The payment made following Substantial Completion shall equal,
    - (A) the Substantial Completion Payment; plus
    - (B) any Unpaid Construction Period Payment as of the date of payment of the Substantial Completion Payment.
  - (ii) Notwithstanding anything else to the contrary in the Project Agreement, Project Co shall retain Maintained Private Capital of no less than \$[REDACTED] subject only to the permitted reduction of the Maintained Private Capital during the Maintenance Period.

**3. CONSTRUCTION PERIOD PAYMENTS**

**3.1 Information to be Provided by Project Co –Lender Advance Confirmations and Project Co Construction Period Payment Documentation**

- (a) In order to enable the City and the Independent Certifier to calculate and verify Earned Value, the progress of the Works, the Capital Costs, Project Co Soft Costs and the Construction Period Payments, Project Co shall deliver to the City Representative and the Independent Certifier:
  - (i) evidence of all Private Capital Invested, to the extent of Project Co Funding Amounts made from sources other than by Lender Advances; and
  - (ii) evidence of all Private Capital Invested from sources other than as set out in Section 3.1 (a) (i) above, including copies of all draw requests, reports, information, and documentation supporting, or required to be submitted to the Lenders, the Lenders' technical advisor and/or the Lenders' Agent, as the case may be, in respect of Project Co's applications for advances, draws, releases of funds or payments by the Lenders under the Lending Agreements (“**Lender Advances**”) and all payment or advance confirmations issued by or on behalf of the Lenders including, for clarity, issued by the

Lenders' technical advisor,

(items in Section 3.1(a)(ii) collectively referred to as “**Lender Advance Confirmations**”). Acceptable forms of confirmation would include such proof as wire transfer statements and/or bank statements and any other evidence as agreed between the City and Project Co.

- (b) Project Co shall acquire, from the Lenders or the Lenders' Agent, as part of the Financing and in a form and content acceptable to the City Representative, the right for Project Co to receive, and to deliver to the City and the Independent Certifier, copies of all Lender Advance Confirmations. Project Co shall deliver to the City Representative and the Independent Certifier, copies of all Lender Advance Confirmations within two Business Days following receipt of each Lender Advance by Project Co.
- (c) In order to enable the City and the Independent Certifier to calculate and verify progress of the Earned Value of the Works, the Capital Costs, the Project Co Soft Costs and the Construction Period Payments, Project Co shall submit, to the Independent Certifier,
  - (i) all information required by Schedule 31 – Works Reports Requirements and Schedule 12 – Works Scheduling Requirements; and
  - (ii) any other information reasonably required by the Independent Certifier to allow the Independent Certifier to assess the Earned Value, the Capital Costs, the Project Co Soft Costs and the payment to be made under Section 2.2(a)(iv)(B) and to assess the Total Capital Cost Incurred to Date,

(collectively, the “**Project Co Construction Period Payment Documentation**”).

- (d) Prior to the issuance of the Initial Capital Investment Date Notice, and thereafter in conjunction with all Construction Period Payment Applications, Project Co shall complete and deliver to the City Representative and the Independent Certifier a Project Co officer certificate in substantially the form set out in Attachment C confirming the information set out therein (“**Project Co Officer Construction Period Payment Certificate**”).

### 3.2 Achieving the Initial Capital Investment

- (a) Once Project Co believes that it has achieved the Initial Capital Investment, it shall deliver to the City Representative and the Independent Certifier,
  - (i) a notice (the “**Initial Capital Investment Date Notice**”) indicating that all requirements necessary to the achievement of the Initial Capital Investment have been met and the date on which Project Co believes such requirements were met;
  - (ii) except to the extent already delivered to the City, all Lender Advance Confirmations as of the date of the Initial Capital Investment Date Notice;
  - (iii) except to the extent already delivered to the City, all Project Co Construction Period Payment Documentation as of the date of the Initial Capital Investment Date Notice; and
  - (iv) a Project Co officer certificate, in the form attached as Attachment G to this Schedule 20, certifying that the Initial Capital Investment has been achieved.

- (b) The Independent Certifier shall, within five Business Days after receipt of the Initial Capital Investment Date Notice, and associated materials, review and fully assess,
- (i) the Project Co Construction Period Payment Documentation and the Lender Advance Confirmations;
  - (ii) the documentation submitted by Project Co with the applicable Initial Capital Investment Date Notice; and
  - (iii) the Project Co officer certificate submitted pursuant to Section 3.2(a)(iv),
- and shall provide to the City and Project Co either,
- (iv) a notice that all requirements to achieve the Initial Capital Investment have been met by Project Co (the “**IC Initial Capital Investment Certificate**”); or
  - (v) a report explaining the Independent Certifier’s reasons for not issuing an IC Initial Capital Investment Certificate and detailing the information that the Independent Certifier requires from Project Co to enable the Independent Certifier to issue an IC Initial Capital Investment Certificate.
- (c) If the Independent Certifier has issued a report in accordance with Section 3.2(b)(v), Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the City Representative with all documents required to fulfill the requirements that the Independent Certifier considers are necessary to be met by Project Co to achieve the Initial Capital Investment and, thereafter, Project Co may give a further Initial Capital Investment Date Notice and the requirements of Sections 3.2(a) and 3.2(b) shall be repeated until the Independent Certifier issues the IC Initial Capital Investment Certificate.
- (d) For clarity, the City acknowledges that,
- (i) Project Co may share the IC Initial Capital Investment Certificate with the Lenders’ Agent or Lenders’ technical advisor; and
  - (ii) subject to Section 3.2(e), if Project Co achieves the Initial Capital Investment prior to the Scheduled Initial Capital Investment Date, the Independent Certifier shall complete the process set out in this Section 3.2, but Project Co’s early achievement of the Initial Capital Investment shall not change the first Payment Calculation Date which shall remain the same, notwithstanding Project Co’s early achievement of the Initial Capital Investment.
- (e) If Project Co,
- (i) achieves the Initial Capital Investment; and
  - (ii) the Independent Certifier has issued the IC Initial Capital Investment Certificate,
- prior to the Scheduled Initial Capital Investment Date, Project Co may apply to the City to revise the first Payment Calculation Date to an earlier date. The City may grant or refuse to grant a revision to the first Payment Calculation Date in their sole discretion.

### 3.3 Submission and Review of Project Co Construction Period Payment Applications

- (a) No later than five days after each Payment Calculation Date, Project Co shall prepare, complete and deliver an application for payment of the applicable Construction Period Payment (a “**Construction Period Payment Application**”) to the City Representative and the Independent Certifier. Each Construction Period Payment Application shall consist of,
- (i) a request for payment substantially in the form attached as Attachment B, including all documents contemplated in the request for payment pursuant to Attachment B (each, a “**Request for Payment**”);
  - (ii) except to the extent already delivered to the City, the Lender Advance Confirmations;
  - (iii) except to the extent already delivered to the City, the Project Co Construction Period Payment Documentation; and
  - (iv) a Project Co Officer Construction Period Payment Certificate certifying the amount of Total Capital Cost Incurred to Date, as of the applicable Payment Calculation Date.
- (collectively, (i) – (iv), the “**Payment Application Requirements**”).
- (b) Project Co shall cooperate with the City Representative and the Independent Certifier to permit the Independent Certifier’s review and assessment of the Project Co Construction Period Payment Documentation, the Lender Advance Confirmations and all other documentation submitted with the Construction Period Payment Application. Such cooperation shall include responding to inquiries by the Independent Certifier so that the Independent Certifier can verify any and all matters related to the Project Co Construction Period Payment Documentation and the Lender Advance Confirmations, and the statements contained therein, to the reasonable satisfaction of the Independent Certifier.
- (c) Within five Business Days after the receipt by the Independent Certifier of a duly completed Construction Period Payment Application, the Independent Certifier shall review the Total Capital Cost Incurred to Date claimed in the Construction Period Payment Application and shall perform such inquiries, investigations and inspections as are necessary for the Independent Certifier to be able to verify Earned Value and Total Capital Cost Incurred To Date and shall provide a certificate (an “**IC Construction Period Payment Authorization Certificate**”) to the City Representative and the Project Co Representative setting out:
- (i) a certification to the City of the Actual Eligible Payment Period Amount, in accordance with the Works Report; and
  - (ii) a calculation of the Construction Period Payment pursuant to Section 2.2, and a calculation of the corresponding Project Co Funding Amount for such Payment Period.
- (d) The City shall, subject to and in accordance with Section 32 of the Project Agreement and no later than five Business Days after the date of the IC Construction Period Payment Authorization Certificate, pay the applicable Construction Period Payment to Project Co.
- (e) Project Co covenants and agrees that Project Co shall,

- (i) carry out the Works and make all payments due and payable to the Construction Contractor in respect of the Works and to the applicable recipients of the Project Co Soft Costs without further payments from the City other than Construction Period Payments and the Substantial Completion Payment as set out in this Schedule 20; and
  - (ii) continue to comply with the provisions of the Project Agreement and the CLA including complying with all holdback and trust obligations from its own resources, if necessary, and as required under the CLA.
- (f) For clarity, Project Co may deliver the Construction Period Payment Application in respect of the first Payment Calculation Date to the City Representative and the Independent Certifier concurrently with the Initial Capital Investment Date Notice.

#### **4. SUBSTANTIAL COMPLETION PAYMENT**

##### **4.1 Substantial Completion Payment**

- (a) Once Project Co believes that it has satisfied all requirements for Substantial Completion, it shall deliver the Substantial Completion Notice contemplated in Section 25.3 of the Project Agreement.
- (b) The City shall, once all preconditions to eligibility for payment have been satisfied in accordance with the provisions of the Project Agreement, including that the provisions of Section 2.5(a)(ii) have been satisfied, and subject to Article 32 of the Project Agreement, pay to Project Co, upon issuance of the Substantial Completion Certificate, the Substantial Completion Payment plus, for clarity, applicable HST, less any unremedied Construction Period Deductions and Lane Closure Adjustment on the Substantial Completion Payment Commencement Date.

##### **4.2 Payment of Remaining Unpaid Construction Period Payments**

- (a) Subject to Section 2.3, once Project Co believes that it has satisfied all requirements for Substantial Completion, it shall deliver an application for payment of any remaining Unpaid Construction Period Payments, to the City Representative and the Independent Certifier substantially in the form attached as Attachment D (the “**Unpaid Construction Period Payment Application**”) which shall provide all documentation in respect of the Unpaid Construction Period Payments. Once all of the conditions for payment of the Substantial Completion Payment have been satisfied by Project Co, the City shall pay or cause to be paid to Project Co, provided that the provisions of Section 2.5(a)(ii) have been satisfied, all Unpaid Construction Period Payments.

#### **5. GENERAL**

- (a) Project Co shall provide direction to the City as to a bank account with a Schedule 1 Bank in Canada or an alternative bank in Canada provided such bank is permitted under the Lending Agreements, where each Construction Period Payment, the Substantial Completion Payment and any Unpaid Construction Period Payments, together with applicable HST, are to be deposited.
- (b) Project Co acknowledges and agrees that payment by the City of Construction Period Payments, the Substantial Completion Payment and the Unpaid Construction Period Payments in accordance with this Schedule 20 constitutes payment by the City to Project Co in satisfaction of the City’s obligation to pay Construction Period Payments and the Substantial Completion Payment, as

applicable, to Project Co under the Project Agreement and in satisfaction of any trust obligation of the City with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

- (c) Project Co shall provide to the City, from time to time and no later than 5 Business Days after a request from the City, such information and documentation as the City may require (including certification in writing by a Project Co officer addressed to the City and the Independent Certifier, to demonstrate that the proceeds of the Construction Period Payments and the Substantial Completion Payment are being used to pay duly authorized costs of the Works, special purpose vehicle costs, Financing costs, and other costs incurred to complete the Works) to verify that all amounts due and payable in respect of the costs of the Works, special purpose vehicle costs, Financing costs and other costs incurred to complete the Works for the applicable period in excess of the applicable Construction Period Payment or Substantial Completion Payment are being satisfied and to satisfy all holdback and trust obligations owed to the Construction Contractor and other Subcontractors from time to time under the CLA.
- (d) Notwithstanding anything to the contrary in this Schedule 20 or the Project Agreement (including achieving the Initial Capital Investment),
  - (i) the City is not obligated to make any payment to Project Co (including for clarity, any Construction Period Payments or the Substantial Completion Payment) unless all conditions precedent applicable to such payment pursuant to this Schedule 20 have been satisfied by Project Co; and
  - (ii) the City are not obligated to make payment to Project Co if, in connection with the Works, the City is or becomes aware,
    - (A) that a claim for lien under the CLA has been registered against the Lands; or
    - (B) that a notice of lien or claim for lien under the CLA has been made against or in respect of the Lands or the holdbacks required to be maintained under the CLA; or
    - (C) that there has been a failure by Project Co or any Project Co Party to comply with the requirements of the CLA, including a failure to satisfy the statutory holdbacks under the CLA in respect of the Works,(in each case to the extent that any such liens, claims or failures have been caused by an act or omission of Project Co or any Project Co Party), and provided that no payment from the City shall be withheld or delayed on the grounds of any liens registered or claimed, where such liens have been duly released, discharged or vacated in accordance with the requirements of the CLA.
- (e) No Construction Period Payment or Substantial Completion Payment or partial or entire use or occupancy of the System Infrastructure, the New Municipal Infrastructure, or the Lands shall constitute acceptance by the City of the Works in accordance with the Project Agreement.
- (f) If the City or Project Co, acting in good faith, dispute a determination of the Independent Certifier made pursuant to this Schedule 20, the City shall pay the amounts in dispute in accordance with the determination of the Independent Certifier and the Party that wishes to dispute the decision of

the Independent Certifier may refer such Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

- (g) Sections 32.1, 32.7, 32.10, 32.11, 32.13 and 32.14 of the Project Agreement apply to Construction Period Payments; and Sections 32.1, 32.7, 32.10, 32.11, 32.12, 32.13 and 32.14 of the Project Agreement apply to the Substantial Completion Payment.
- (h) Notwithstanding anything to the contrary in the Project Agreement, the City shall not make any deduction, set-off or withholding from any Construction Period Payment or Unpaid Construction Period Payment other than in accordance with this Schedule 20.

## 6. CONSTRUCTION ENFORCEMENT DEDUCTIONS

### 6.1 Construction Period Deductions

- (a) If, at any time prior to Substantial Completion, Project Co commits a Construction Period Quality Failure, the City may, in its sole discretion, assess and accumulate a Construction Period Deduction, and deduct the total of all Construction Period Deductions from the Substantial Completion Payment.

### 6.2 Calculation of the Construction Period Deductions

- (a) Each Construction Period Deduction shall be calculated in accordance with the following formula:

$$TCPD_n = \sum CPD_n$$

Where:

$TCPD_n$  means the Total Construction Period Deduction applicable to Payment Period n; and

$\sum CPD_n$  means the sum of Construction Period Deductions in respect of the relevant Payment Period in relation to Construction Period Quality Failures calculated in accordance with this Schedule 20 (the “**Construction Period Quality Failure Deduction**”)

- (b) The deduction attributable to each Construction Period Quality Failure shall be as follows:
  - (i) in the case of a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by Project Co, there shall be no deduction;
  - (ii) in the case of a Medium Construction Period Quality Failure for a Non-Conformance Report initiated by Project Co, each deduction shall equal \$[REDACTED];
  - (iii) in the case of a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City:
    - (A) the first deduction shall equal \$[REDACTED]; and
    - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period, shall be [REDACTED] per cent of

- the immediately previous deduction but shall not exceed [REDACTED] per cent of the first deduction;
- (iv) in the case of a Medium Construction Period Quality Failure for a Non-Conformance Report initiated by the City:
    - (A) the first deduction shall equal \$[REDACTED]; and
    - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal [REDACTED] per cent of the immediately previous deduction but shall not exceed [REDACTED] per cent of the first deduction; and
  - (v) in the case of a Critical Construction Period Quality Failure for a Non-Conformance Report initiated by either Party:
    - (A) the first deduction shall equal \$[REDACTED]; and
    - (B) each subsequent deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal [REDACTED] per cent of the immediately previous deduction but shall not exceed [REDACTED] per cent of the first deduction.
- (c) For clarity, subject to Project Co's right to Dispute the Construction Period Quality Failure, the occurrence of a Construction Period Quality Failure will immediately give rise to a right, on behalf of the City, to apply a Construction Period Quality Failure Deduction against the Substantial Completion Payment, irrespective of the Remedial Period permitted.
- (d) After the occurrence of a Construction Period Quality Failure, Project Co shall remediate the Construction Period Quality Failure prior to the expiration of the applicable Remedial Period set out in Attachment E. If, prior to the expiration of the applicable Remedial Period, Project Co demonstrates to the satisfaction of the City Representative, acting reasonably, that it has remedied the Construction Period Quality Failure, no further Construction Period Deduction shall be made in respect of that Construction Period Quality Failure. If Project Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period, the City, may, in their sole discretion, apply a further Construction Period Deduction, calculated in accordance with this Section 6.2, and a further Remedial Period (or Remedial Periods) of the same duration shall be deemed to have commenced. The City may, in their sole discretion, apply the applicable Construction Period Deduction each time Project Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period until such time as Project Co demonstrates, to the satisfaction of the City Representative, acting reasonably, that it has remediated the applicable Construction Period Quality Failure.
- (e) For the purposes of calculating the Construction Period Deductions in accordance with this Schedule 20, the Parties shall have regard to Sections 38.2(k) and 42.2(e) of the Project Agreement.

**6.3 Tolerances for Minor Construction Period Quality Failures for Non-Conformance Reports Initiated by the City**

- (a) The City shall assess Construction Period Quality Failures on a Construction Period Month by Construction Period Month basis. Except as provided in Section 6.3(c), the City shall not apply a Construction Period Deduction due to a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City in respect of any Construction Period Month in which the total number of Minor Construction Period Quality Failures for Non-Conformance Reports initiated by the City for that Construction Period Month is less than or equal to [REDACTED] (the “**Minor Construction Period Quality Failure Tolerance**”).
- (b) If the Minor Construction Period Quality Failure Tolerance is exceeded, the City may, in their sole discretion, apply a Construction Period Deduction for each Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City in excess of the Minor Construction Period Quality Failure Tolerance during the applicable Construction Period Month.
- (c) If, in any Construction Period Month, a Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City is due to circumstances that are substantively the same cause as a previous Minor Construction Period Quality Failure for a Non-Conformance Report initiated by the City (within the same Construction Period Month or in a different Construction Period Month) (a “**Repeated Minor Construction Period Quality Failure**”), then a Construction Period Deduction shall be made in respect of the third and each subsequent Repeated Minor Construction Period Quality Failure, irrespective of the Minor Construction Period Quality Failure Tolerance.

**6.4 Administration of Construction Period Quality Failures and Construction Period Deductions**

- (a) Subject to Sections 6.4(b) to 6.4(e) inclusive, the City shall use the Monthly Non-Conformance Report produced by Project Co for the purposes of calculating the relevant Construction Period Deductions.
- (b) If either Party believes that there is an error or omission in a Monthly Non-Conformance Report, that Party shall promptly provide Notice to the other Party of such error or omission. Immediately after a Notice given pursuant to this Section 6.4(b), Project Co and the City shall attempt to resolve or clarify the error or omission and amend the applicable Monthly Non-Conformance Report, to their mutual satisfaction, acting reasonably. Subject to Section 6.4(e), if the Parties fail to resolve or clarify the error or omission within ten Business Days after a Notice given pursuant to this Section 6.4(b), either Party may refer the matter to the Dispute Resolution Procedure. Subject to Section 6.4(d) and Section 6.4(e), the Parties are prohibited from giving Notice of an error or omission pursuant to this Section 6.4(b) after the expiration of 60 days after the date of the applicable Monthly Non-Conformance Report.
- (c) Subject to Section 6.4(e), if Project Co fails to monitor or accurately report a Construction Period Event or Construction Period Quality Failure then, in addition to the Construction Period Deduction to be made in respect of the relevant Construction Period Quality Failure (if any), a failure to monitor or report a Construction Period Event or a Construction Period Quality Failure shall be deemed to be a Minor Construction Period Quality Failure.
- (d) In the event that any inspection or investigation by the City or Project Co pursuant to the Project Agreement reveals new errors, omissions or failures of the type referred to in Section 6.4(b) or

Section 6.4(c), such errors, omissions or failures shall be dealt with in accordance with Section 6.4(b) or Section 6.4(c), as applicable, and, for clarity, the City may, in its sole discretion, apply Construction Period Deductions in respect of any Construction Period Quality Failures discovered pursuant to this Section 6.4(d) in the manner set out in Section 6.2. Any such Construction Period Deductions shall be made from the Substantial Completion Payment. For clarity, the 60 day deadline set out in Section 6.4(b) shall not apply to errors, omissions or failures revealed pursuant to this Section 6.4(d).

- (e) For the purposes of Sections 6.4(b), 6.4(c) and 6.4(d), if Project Co or a Project Co Party has engaged in fraudulent action or inaction, deliberate misrepresentation, or gross misconduct or incompetence,
  - (i) in the preparation of the Monthly Non-Conformance Report; or
  - (ii) in carrying out the Work resulting in Construction Period Quality Failures,then,
  - (iii) the 60 day deadline set out in Section 6.4(b) shall not apply; and
  - (iv) a failure to monitor or accurately report a Construction Period Event or Construction Period Quality Failure pursuant to Section 6.4(c) shall be deemed to be a Critical Construction Period Quality Failure.
- (f) For clarity, if Construction Period Performance Criteria are based upon Non-Conformance Reports, no Construction Period Deductions shall be made for a Non-Conformance Report which is subject to an objection by Project Co, a Notice of objection by Project Co or Dispute Resolution Process, pursuant to Part 7 of Schedule 11 – Integrated Management System Requirements.

#### **6.5 Additional Requirements for Tracking and Reporting**

- (a) In addition to the requirements of Section 7.2 of Part 7 to Schedule 11 – Quality Management, the Non Conformance Tracking System shall record Construction Period Quality Failure Deductions pursuant to this Schedule 20.
- (b) In addition to the requirements of Section 7.2 of Part 7 to Schedule 11 – Quality Management, the Monthly Non-Conformance Report shall contain:
  - (i) the number of Construction Period Quality Failure Deductions in each Construction Period Failure Category accrued within the last Construction Period Month pursuant to this Schedule 20; and
  - (ii) summary statistics and historic trends since Financial Close for the number of Construction Period Quality Failure Deductions in each Construction Period Failure Category each Construction Period Month pursuant to this Schedule 20.

#### **6.6 Disputing a Non-Conformance Report During the Construction Period**

- (a) In respect of the following circumstances, the Parties shall be subject to the binding determination of the Independent Certifier pursuant to Section 4.3 and 4.4 of Schedule 26 – Dispute Resolution

Procedure and the Independent Certifier's decision shall be final and shall not be subject to Dispute Resolution Procedure:

- (i) a Notice of objection to a Non-Conformance Report has not been resolved by mutual agreement between the City and Project Co within five Business Days after the delivery of a Notice of the objection pursuant to Section 7.1(a)(v) and Section 7.1(a)(vii) of Part 7 to Schedule 11 – Integrated Management System Requirements; and
- (ii) the Non-Conformance Report referred to in Section 6.6(a)(i) would have been a Construction Period Quality Failure with a Construction Period Failure Category of "Minor" if the Notice of objection referred to in Section 6.6(a)(i) had not been issued.

ATTACHMENT A

Table A: Payment Calculation Dates and Projected Construction Period Payments

Payment Period (Column 1)	Payment Calculation Date (Column 2)	Projected Project Co Soft Costs (Column 3)	Projected Capital Costs (Column 3A)	Projected Earned Value (Cumulative) (Column 3B)	Projected Eligible Construction Period Payment (Column 4)	Projected Eligible Construction Period Payment (Cumulative) (Column 5)	Projected Project Co Funding Amount (Column 6)	Projected Project Co Funding Amount (Cumulative) (Column 7)	Projected Total Capital Cost Incurred to Date (Column 8)	Projected Construction Period Payment (Column 9)	Projected Construction Period Payment (Cumulative) (Column 10)
1.	30-Jun-19	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
2.	01-Jul-19	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
3.	01-Aug-19	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
4.	01-Sep-19	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
5.	01-Oct-19	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
6.	01-Nov-19	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
7.	01-Dec-19	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
8.	01-Jan-20	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
9.	01-Feb-20	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
10.	01-Mar-20	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
11.	01-Apr-20	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
12.	01-May-20	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
13.	01-Jun-20	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)
14.	01-Jul-20	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)	\$(REDACTED)

15.	01-Aug-20	\$(REDACTED)									
16.	01-Sep-20	\$(REDACTED)									
17.	01-Oct-20	\$(REDACTED)									
18.	01-Nov-20	\$(REDACTED)									
19.	01-Dec-20	\$(REDACTED)									
20.	01-Jan-21	\$(REDACTED)									
21.	01-Feb-21	\$(REDACTED)									
22.	01-Mar-21	\$(REDACTED)									
23.	01-Apr-21	\$(REDACTED)									
24.	01-May-21	\$(REDACTED)									
25.	01-Jun-21	\$(REDACTED)									
26.	01-Jul-21	\$(REDACTED)									
27.	01-Aug-21	\$(REDACTED)									
28.	01-Sep-21	\$(REDACTED)									
29.	01-Oct-21	\$(REDACTED)									
30.	01-Nov-21	\$(REDACTED)									
31.	01-Dec-21	\$(REDACTED)									
32.	01-Jan-22	\$(REDACTED)									
33.	01-Feb-22	\$(REDACTED)									
34.	01-Mar-22	\$(REDACTED)									
35.	01-Apr-22	\$(REDACTED)									

36.	01-May-22	\$(REDACTED)									
37.	01-Jun-22	\$(REDACTED)									
38.	01-Jul-22	\$(REDACTED)									
39.	10-Aug-22	\$(REDACTED)									

ATTACHMENT B

Form of Request for Payment

TO: City of Ottawa AND TO: [Independent Certifier]	BY: [Project Co Name] (“Project Co”)
Construction Period Payment No:	Project: Trillium Line Extension (“Project”)
Date: [Date]	Project Agreement dated _____ (“Project Agreement”)

1. Project Co hereby makes application for payment in the amount of \_\_\_\_\_ [insert amount in words] Dollars (\$[insert amount in numbers]) which is in respect of Payment Period No. \_\_ in Table A. This payment is for a portion of the Total Capital Costs pursuant to the terms of the Project Agreement and Schedule 20 – Construction Period Payments. Capitalized terms used and not defined herein shall have the same meaning given to them in the Project Agreement.
2. Attached to this Request for Payment is a Project Co Officer Construction Period Payment Certificate in respect of this Payment Period No.\_\_\_\_ [Note: Use the form of certificate set out in Attachment C of this Schedule 20.];
3. Project Co hereby certifies that the Earned Value and the Total Capital Cost Incurred to Date for the applicable Payment Period qualifies Project Co for the Construction Period Payment being requested herein.
4. Attached hereto as Appendix 1 are the Lender Advance Confirmations for the period covered by this Request for Payment.
5. Attached hereto as Appendix 2 is a current Workplace Safety and Insurance Board Clearance Certificate for Construction Contractor evidencing full compliance by [Project Co/Construction Contractor] with the requirements of the *Workplace Safety and Insurance Act, 1997* (Ontario).
6. Attached hereto as Appendix 3 is a Statutory Declaration by Project Co on CCDC Form 9A (2001) evidencing compliance by Project Co with the holdback requirements of the CLA.

The information and calculations contained herein and on the attachments hereto are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20 [•].

[Project Co]

per: \_\_\_\_\_

Appendix 1

Summary of any Lender Advance Confirmations for the Period

Appendix 2

Current Workplace Safety and Insurance Board Clearance Certificate

Appendix 3

Statutory Declaration by Project Co on CCDC Form 9A (2001)

ATTACHMENT C

Form of Project Co Officer Construction Period Payment Certificate

TO: City of Ottawa AND TO: [Independent Certifier]	BY: [Project Co Name] (“Project Co”)
Progress Certificate/Construction Period Payment No: ____	Project: Trillium Line Extension (“Project”)
Date: [Date]	Project Agreement dated ____ (“Project Agreement”)
	Request for Payment dated ____ (“Request for Payment”)

I, \_\_\_\_\_, the [insert title] of [Project Co] hereby certify for and on behalf of Project Co without incurring personal liability and confirm that the same be relied upon by the City of Ottawa and the Independent Certifier without further enquiry as of \_\_\_\_\_ [insert date] that:

1. I am a duly authorized [signing officer of][signatory for] Project Co, am familiar with the provisions of Project Agreement and have made reasonable investigations of corporate records and inquiries of other officers and senior personnel of Project Co in certifying the information set out below. Terms defined in the Project Agreement have the same meanings when used in this certificate.
2. No Project Co Event of Default has occurred and is continuing under the Project Agreement.
3. Project Co has available to it sufficient funds to achieve Substantial Completion in accordance with the Project Agreement subject to Project Co continuing to meet its obligations under the Project Agreement and in receipt of Construction Period Payments from the City.
4. All funds received and disbursed by Project Co in connection with the Project prior to the date of this Certificate have been used solely in respect of the payment of Total Capital Costs properly due and payable.
6. The requested Construction Period Payment amount to which this Certificate is attached does not exceed the Projected Eligible Construction Period Payment (Cumulative) set out in Table A applicable to the period to which this Certificate applies.
6. Project Co has complied with all requirements of Applicable Law in connection with the Project, including without limitation, all requirements under the *Workplace Safety and Insurance Act, 1997* (Ontario) and the CLA. No claims for lien or notices of lien under the CLA have been received by Project Co or any Project Co Party which have not been duly released, discharged or vacated in accordance with the requirements of the CLA, if applicable. Any notice of lien or claim for lien identified in the Request for Payment to which this Certificate is attached has been released, discharged or vacated in accordance with the requirements of the CLA.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Title: \_\_\_\_\_

**Appendix 1 to Attachment C**

Copies of any Lender Advance Confirmations (before Initial Capital Investment Date)

ATTACHMENT D

Form of Substantial Completion Payment Application

TO: City of Ottawa AND TO: [Independent Certifier]	BY: [Project Co Name] (“Project Co”)
Substantial Completion Payment Application	Project: Trillium Line Extension (“Project”)
Date: [Date]	Project Agreement dated _____ (“Project Agreement”)

1. Project Co hereby makes application for the Substantial Completion Payment and Unpaid Construction Period Payments in the amount of [insert amount in words] Dollars (\$[insert amount in numbers]) pursuant to the terms of Section 25.3 of the Project Agreement and Schedule 20 – Construction Period Payments. Capitalized terms used and not defined herein shall have the same meaning given to them in the Project Agreement.
2. No Project Co Event of Default has occurred and is continuing under the Project Agreement..
3. Project Co has complied with all requirements of Applicable Law in connection with the Project, including without limitation, all requirements under the *Workplace Safety and Insurance Act, 1997* (Ontario) and the CLA. No claims for lien or notices of lien under the CLA have been received by Project Co or any Project Co Party which have not been duly released, discharged or vacated in accordance with the requirements of the CLA.
4. Attached hereto as Appendix 1 is a current Workplace Safety and Insurance Board Clearance Certificate for Project Co evidencing full compliance by [Project Co/Construction Contractor] with the requirements of the *Workplace Safety and Insurance Act, 1997* (Ontario), as amended.
5. Attached hereto as Appendix 2 is a Statutory Declaration by Project Co on CCDC Form 9A (2001) evidencing compliance by Project Co with the holdback requirements of the CLA.
6. Attached hereto as Appendix 3 is a sub-search of the title to the Lands against which a claim for lien under the CLA could be registered, if applicable. Any notice of lien or claim for lien identified in such Appendix 4 has been released, discharged or vacated in accordance with the requirements of the CLA.

The information and calculations contained herein and on the attachments hereto are certified to be true, accurate and complete.

Dated at [City], [Province] this [day] day of [month], 20 [•].

[Project Co]

per: \_\_\_\_\_

Appendix 1 to Attachment D  
Workplace Safety and Insurance Board Clearance Certificate

Appendix 2 to Attachment D  
Statutory Declaration by Project Co on CCDC Form 9A (2001)

Appendix 3 to Attachment D  
Sub-search of the Title to the Lands

ATTACHMENT E

CONSTRUCTION PERIOD PERFORMANCE CRITERIA

Non-Conformances Discovered in Physical Elements of the Works

Table 1

Reference	Requirement to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPPC-01: Schedule 20 – Construction Period Payments	Physical elements of the Works shall meet the requirements of the Project Agreement, such that: (a) a Critical Qualifying NCR with a ‘Pending Status’ does not occur; or (b) Project Co Accepted Works are not Contested Non-Conforming Works.	CPQF	Critical	The first Remedial Period shall be equal to the time set out in NCR to resolve the Non-Conformance; thereafter, the Remedial Period shall be the lesser of 20 Business Days (or such longer period as may be approved by the City in its sole discretion) and the first Remedial Period.
CPPC-02: Schedule 20 – Construction Period Payments	Physical elements of the Works shall meet the requirements of the Project Agreement, such that a Medium Qualifying NCR with a ‘Pending Status’ does not occur.	CPQF	Medium	The first Remedial Period shall be equal to the time set out in Non-Conformance Report to remedy the Non-Conformance; thereafter, the Remedial Period shall be the lesser of twenty (20) Business Days (or such longer period as may be approved by the City in its sole discretion) and the first Remedial Period.
CPPC-03: Schedule 20 – Construction Period Payments	Physical elements of the Works shall meet the requirements of the Project Agreement, such that a Minor Qualifying NCR with a ‘Pending Status’ does not occur.	CPQF	Minor	The first Remedial Period shall be equal to the time set out in Non-Conformance Report to remedy the Non-Conformance; thereafter, the Remedial Period shall be the lesser of twenty (20) Business Days (or such longer period as may be approved by the City in its sole discretion) and the first Remedial Period.

Non-Conformances that are not physical elements of the Works

Table 2

Reference	Requirement to be met	Construction Period Failure Type	Construction Period Failure Category	Remedial Period
CPQC-04: Schedule 20 – Construction Period Payments	Works that are not physical elements of the Works shall meet the requirements of the Project Agreement, such that a Critical Qualifying Process NCR with a ‘Pending Status’ does not occur	CPQF	Critical	The first Remedial Period shall be equal to the time set out in NCR to resolve the Non-Conformance; thereafter, the Remedial Period shall be the lesser of 20 Business Days (or such longer period as may be approved by the City in its sole discretion) and the first Remedial Period.
CPQC-05: Schedule 20 – Construction Period Payments	Works that are not physical elements of the Works shall meet the requirements of the Project Agreement, such that a Medium Qualifying Process NCR with a ‘Pending Status’ does not occur.	CPQF	Medium	The first Remedial Period shall be equal to the time set out in Non-Conformance Report to remedy the Non-Conformance; thereafter, the Remedial Period shall be the lesser of twenty (20) Business Days (or such longer period as may be approved by the City in its sole discretion) and the first Remedial Period.
CPQC-06: Schedule 20 – Construction Period Payments	Works that are not physical elements of the Works shall meet the requirements of the Project Agreement, such that a Minor Qualifying Process NCR with a ‘Pending Status’ does not occur.	CPQF	Minor	The first Remedial Period shall be equal to the time set out in Non-Conformance Report to remedy the Non-Conformance; thereafter, the Remedial Period shall be the lesser of twenty (20) Business Days (or such longer period as may be approved by the City in its sole discretion) and the first Remedial Period.

**Specific Non-Conformances**

**Table 3**

For clarity a deduction under Table 3 is not subject to a deduction under Table 2.

Construction Period Failure Categories defined in Table 3 shall escalate for persistent, ongoing and repeated Non-Conformances.

<b>Reference</b>	<b>Requirements to be met</b>	<b>Construction Period Failure Type</b>	<b>Construction Period Failure Category</b>	<b>Remedial Period</b>
CPPC-07:	NOT USED			
CPPC-08: Project Agreement Section 21.1	Subject to Section 21.5(b) of the Project Agreement, Project Co shall provide access to the City, and the Government Entities and their respective representatives to the Lands, the New City Infrastructure, Existing Infrastructure or any workshop	CPQF	Minor	1 Business Day
CPPC-09: Project Agreement Section 21.5	Subject to Section 21.5(b) of the Project Agreement, Project Co shall provide access to the Independent Certifier, and all Other Contractors to the Lands, the New City Infrastructure, Existing Infrastructure or any workshop	CPQF	Minor	1 Business Day
CPPC-10: Project Agreement Section 27.4	Project Co shall ensure that there are sufficient numbers of competent staff, including all relevant grades of supervisory staff, engaged in the performance of the Works to ensure the proper performance of the Project Agreement	CPQF	Medium	20 Business Days
CPPC-11: Schedule 12 – Works Scheduling Requirements	Project Co shall prepare and submit PBS-1 at Financial Close.	CPQF	Critical	5 Business Days
CPPC-12: Schedule 12 – Works Scheduling Requirements	Project Co shall prepare and submit, within 180 days after Financial Close, PBS-2.	CPQF	Critical	5 Business Days
CPPC-13: Schedule 10 – Review Procedure	Works Schedules shall not receive consecutive ‘CRITICAL COMMENT’ or ‘MAJOR COMMENT’ from the City for the same reason	CPQF	Critical	n/a

<b>Reference</b>	<b>Requirements to be met</b>	<b>Construction Period Failure Type</b>	<b>Construction Period Failure Category</b>	<b>Remedial Period</b>
CPPC-14: Schedule 10 – Review Procedure	The following Works Submittals shall not receive a “MAJOR COMMENT” or “CRITICAL COMMENT” from the City more than two times in a row for the same reason:  (a) Design Management Plan, Construction Management Plan, Traffic and Transit Management Plan, Environmental Management Plan, Design Certificates, Construction Certificates, from Appendix A to Schedule 10 – Review Procedure; and  (b) the Geotechnical Instrumentation Monitoring Plan from Appendix A to Schedule 10 – Review Procedure.	CPQF	Medium	5 Business Days
CPPC-15: Schedule 17 – Environmental Obligations, Appendix B	Submission of Environmental Management Plan Updates	CPQF	Medium	5 Business Days
CPPC-16: Schedule 17 – Environmental Obligations, Appendix B	Submission of Annual Compliance Monitoring Report	CPQF	Medium	5 Business Days
CPPC-17: Schedule 17 – Environmental Obligations, Appendix B	Submission Independent Environmental Audit	CPQF	Medium	5 Business Days
CPPC-18: Schedule 17 – Environmental Obligations, Appendix B	Submission of Sustainability Annual Report Card	CPQF	Medium	5 Business Days
CPPC-19: Schedule 17 – Environmental Obligations, Appendix B	Submission Independent Environmental Audit	CPQF	Medium	5 Business Days

<b>Reference</b>	<b>Requirements to be met</b>	<b>Construction Period Failure Type</b>	<b>Construction Period Failure Category</b>	<b>Remedial Period</b>
CPPC-20: Schedule 17 – Environmental Obligations, Section 8.4	Project Co shall ensure during the Construction Period, air-borne and ground-borne noise and vibration impacts on Sensitive Receivers do not exceed the Applicable Noise and Vibration Requirements and Additional Sensitive Receiver Performance Requirements	CPQF	Critical	1 Business Day, or longer as agreed to by the City acting reasonably.
CPPC-21: Schedule 18 – Communications and Stakeholder Engagement Obligations, Part 4	Project Co shall deliver communications and stakeholder engagement activities in accordance with Schedule 18 Part 4	CPQF	Minor	1 Business Day
CPPC-22: Schedule 18 – Communications and Stakeholder Engagement Obligations, Section 5.1	Project Co shall provide Notification to the City and a draft public notification in accordance with the requirements of Schedule 18 Section 5.1	CPQF	Minor	1 Business Day
CPPC-23: Schedule 11 – Integrated Management System Requirements, Section 4.4	Project Co shall prepare and submit each Inspection and Test Plan in respect of the Works to the City pursuant to Schedule 10 - Review Procedure at least 15 Business Days prior to performing the relevant Works.	CPQF	Minor	1 Business Day
CPPC-24: Schedule 11 – Integrated Management System Requirements, Section 5.1(b)	Project Co shall provide an updated IMS Audit Plan at twelve month intervals following submission of the initial IMS Audit Plan.	CPQF	Medium	20 Business Days
CPPC-25: Schedule 11 – Integrated Management System Requirements, Section 5.1(b)	At each occurrence of Project Co failing to follow the IMS Audit Plan without the prior agreement in writing of the City	CPQF	Medium	20 Business Days

<b>Reference</b>	<b>Requirements to be met</b>	<b>Construction Period Failure Type</b>	<b>Construction Period Failure Category</b>	<b>Remedial Period</b>
CPPC-26: Schedule 11 – Integrated Management System Requirements, Section 5.2(c)	All IMS Non-Conformances identified by the Internal IMS Audits must be addressed and corrective measures implemented by Project Co. Project Co shall provide final audit reports to the City within 10 Business Days of the closing of the audits.	CPQF	Medium	1 Business Day
CPPC-27: Schedule 11 – Integrated Management System Requirements, Section 5.4(a)(ii)	Project Co shall prepare a Corrective Action plan, and submit it to the City within 20 Business Days of the closing of the City’s IMS Audit. At each occurrence of Project Co failing to prepare a Corrective Action plan within the required time period.	CPQF	Minor	1 Business Day
CPPC-28: Schedule 11 – Integrated Management System Requirements, Section 7.3(a)	Project Co shall resolve Non Conformances within the response time specified on the Non Conformance Reports.	CPQF	Medium	20 Business Days
CPPC-29: Schedule 25 – Record Provisions, Section 1.1	Project Co shall keep and maintain records in accordance with Schedule 25 Section 1.1	CPQF	Minor	10 Business Days
CPPC-30: Schedule 17 – Environmental Obligations, Section 8.4	Project Co will be required to provide Tree replacement equivalent to 0.25:1 as detailed in Appendix A of Schedule 17.	CPQF	Minor	20 Business Days

## ATTACHMENT F

### CREDIT RULES

#### 1. CREDIT RULES FOR THE EVALUATION OF EARNED VALUE

##### 1.1 Purpose of Credit Rules

- (a) The Credit Rules set out requirements agreed between the City and Project Co for use and interpretation of the Earned Value Measurement Techniques, pursuant to this Schedule 20.

##### 1.2 Change of Credit Rules

- (a) In the event that Project Co or the City propose a change to the Credit Rules, the Independent Certifier may agree to such proposed change to the Credit Rule, provided that:
  - (i) any proposed change the Credit Rules will result in revised Credit Rules that:
    - (A) continue to meet the Earned Value Measurement Techniques; and
    - (B) follow the principles, guidance, and intent of the Credit Rules set out in this Attachment F, wherever possible;
  - (ii) any proposed change to the Credit Rules is subject to consultation with the City and Project Co at least three months prior to the first Construction Period that uses those revised Credit Rules;
  - (iii) the Independent Certifier considers any responses made by the City and Project Co to a proposed change to the Credit Rules and the Independent Certifier provides a report justifying its decision regarding acceptance or rejection of any proposal to change the Credit Rules; and
  - (iv) prior to the start of the first Construction Period that is to use the revised Credit Rules for the evaluation of Earned Value:
    - (A) the proposed changes to the Credit Rules are agreed to by the Independent Certifier; and
    - (B) both the City and Project Co receive the revised Credit Rules from the Independent Certifier.

##### 1.3 Selection of Measurement Methods

- (a) In principle, when selecting the appropriate measurement methods from the Earned Value Measurement Techniques, the following principles shall be applied:
  - (i) for tangible work or tasks taking three Construction Periods or more to perform, the measurement methods shall be considered in the following decreasing order of preference:
    - (A) firstly, physical measurement;
    - (B) secondly, weighted milestone; and

- (C) thirdly, percent complete;
- (ii) for tangible work or tasks taking one or two Construction Periods to perform, the measurement methods shall be considered in the following decreasing order of preference:
  - (A) fixed formula using the 0/100 method or 0/50/100 method; and
- (iii) for intangible work or tasks, the measurement methods shall be considered in the following decreasing order of preference:
  - (A) firstly, apportioned effort; and
  - (B) secondly, only where apportioned effort is not possible, level of effort.
- (b) Table 1 sets out the measurement methods that shall be used from the Earned Value Measurement Techniques for specific cost categories, unless there are technical reasons preventing these measurement methods from being used. The specific cost categories in Table 1 are set out in ‘Standard Cost Codes for Capital Projects – Definitions’, US Federal Transportation Administration.

<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
<b>10</b>	<b>Guideway</b>	
10.01	Guideway: at-grade exclusive right-of-way (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.04	Guideway: aerial structure (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.05	Guideway: Built-up fill	Activity completion and physical measurement using the fixed formula 0/100 method
10.06	Guideway: underground cut & cover (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.07	Guideway: underground tunnel (including trackwork)	Activity completion and physical measurement using the fixed formula 0/100 method
10.09	Track: Direct fixation	Activity completion and physical measurement using the fixed formula 0/100 method
10.10	Track: Embedded	Activity completion and physical measurement using the fixed formula 0/100 method
10.11	Track: Ballasted	Activity completion and physical measurement using the fixed formula 0/100 method
10.12	Track: Special (switches, turnouts)	Activity completion and physical measurement using the fixed formula 0/100 method
<b>20</b>	<b>Stations, Stops, Terminals, Intermodals</b>	
20.01	At-grade station; stop; shelter; mall; terminal; platform	Activity completion and physical measurement using the fixed formula 0/100 method

<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
20.03	Underground station; stop; shelter; mall; terminal; platform	Activity completion and physical measurement using the fixed formula 0/100 method
20.05	Joint development	Activity completion and physical measurement using the fixed formula 0/100 method
<b>30</b>	<b>Support Facilities: Yards, Shops and Admin Buildings</b>	
30.01	Administration Building: Office, sales, storage, revenue counting	Activity completion and physical measurement using the fixed formula 0/100 method
30.03	Heavy maintenance facility	Activity completion and physical measurement using the fixed formula 0/100 method
30.05	Yard and Yard Track	Activity completion and physical measurement using the fixed formula 0/100 method
<b>40</b>	<b>Sitework and Special Conditions</b>	
40.01	Demolition; clearing; earthwork	Activity completion and physical measurement using the fixed formula 0/100 method
40.02	Site utilities; utility relocation	Activity completion and physical measurement using the fixed formula 0/100 method
40.03	Hazardous material; contaminated soil mitigation; ground water treatments	Activity completion and physical measurement using the fixed formula 0/100 method
40.04	Environmental mitigation, e.g. wetlands, historic/archeologic, parks	Activity completion and physical measurement using the fixed formula 0/100 method
40.05	Site structures including retaining walls; sound walls and other structures	Activity completion and physical measurement using the fixed formula 0/100 method
40.06	Pedestrian and bike access and accommodation; landscaping	Activity completion and physical measurement using the fixed formula 0/100 method
40.07	Automobile; bus; van access ways including roads; parking lots	Activity completion and physical measurement using the fixed formula 0/100 method
40.08	Temporary facilities	Activity completion and physical measurement using the fixed formula 0/100 method
<b>50</b>	<b>Systems</b>	
50.01	Train control and signals	Activity completion and physical measurement using the fixed formula 0/100 method
50.02	Traffic signals and crossing protection	Activity completion and physical measurement using the fixed formula 0/100 method
50.03	Traction power supply and substations	Activity completion and physical measurement using the fixed formula 0/100 method
50.04	Traction power distribution and catenary	Activity completion and physical

<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
		measurement using the fixed formula 0/100 method
50.05	Communications	Activity completion and physical measurement using the fixed formula 0/100 method
50.06	Fare collection system and equipment	Activity completion and physical measurement using the fixed formula 0/100 method
50.07	Central control	Activity completion and physical measurement using the fixed formula 0/100 method
<b>80</b>	<b>Professional Services and Agency Costs</b>	
80.01	Preliminary design	Weighted milestone
80.02	Final design	Weighted milestone
80.03	Project management for design and construction	Apportioned effort
80.04	Construction administration and management	Apportioned effort
80.05	Professional liability and other insurance costs	Weighted milestone
80.06	Legal; permits; review fees by other agencies, cities, etc;	Weighted milestone
80.07	Surveys, testing (quality related), investigation, inspection	Weighted milestone or apportioned effort
80.08	Start up; testing and commissioning	Weighted milestone or apportioned effort
<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
<b>10</b>	<b>Guideway</b>	
10.01	Guideway: at-grade exclusive right-of-way (including trackwork)	Physical measurement
10.04	Guideway: aerial structure (including trackwork)	Physical measurement
10.06	Guideway: underground cut & cover (including trackwork)	Physical measurement
10.07	Guideway: underground tunnel (including trackwork)	Physical measurement
<b>20</b>	<b>Stations, Stops, Terminals, Intermodals</b>	
20.01	At-grade station; stop; shelter; mall; terminal; platform	Physical measurement
20.03	Underground station; stop; shelter; mall; terminal; platform	Physical measurement
<b>30</b>	<b>Support Facilities: Yards, Shops and Admin Buildings</b>	
30.03	Heavy maintenance facility	Physical measurement
<b>40</b>	<b>Sitework and Special Conditions</b>	
40.01	Demolition; clearing; earthwork	Physical measurement
40.02	Site utilities; utility relocation	Physical measurement
40.03	Hazardous material; contaminated soil mitigation; ground water treatments	Physical measurement or weighted milestone
40.05	Site structures including retaining walls; sound walls and other structures	Physical measurement
40.06	Pedestrian and bike access and accommodation; landscaping	Physical measurement or weighted milestone

<b>Table 1: Earned Value measurement methods for specific cost categories</b>		
<b>Standard Cost Code</b>	<b>Description</b>	<b>Measurement Method from the Earned Value Measurement Techniques</b>
40.07	Automobile; bus; van access ways including roads; parking lots	Physical measurement or weighted milestone
40.08	Temporary facilities	Physical measurement or weighted milestone
<b>50</b>	<b>Systems</b>	
50.01	Train control and signals	Physical measurement or weighted milestone
50.02	Traffic signals and crossing protection	Physical measurement or weighted milestone
50.03	Traction power supply and substations	Physical measurement or weighted milestone
50.04	Traction power distribution and catenary	Physical measurement or weighted milestone
50.05	Communications	Physical measurement or weighted milestone
50.06	Fare collection system and equipment	Physical measurement or weighted milestone
50.07	Central control	Physical measurement or weighted milestone
<b>80</b>	<b>Professional Services and Agency Costs</b>	
80.01	Preliminary design	Weighted milestone
80.02	Final design	Weighted milestone
80.03	Project management for design and construction	Apportioned effort
80.04	Construction administration and management	Apportioned effort
80.05	Professional liability and other insurance costs	Weighted milestone
80.06	Legal; permits; review fees by other agencies, cities, etc;	Weighted milestone
80.07	Surveys, testing (quality related), investigation, inspection	Weighted milestone or apportioned effort
80.08	Start up; testing and commissioning	Weighted milestone or apportioned effort

- (c) The measurement methods associated with procurement of materials shall be in accordance with the following principles:
- (i) except as set out in Section 1.3(c)(ii), the costs of materials used in construction shall be included in the cost of each construction task and shall be evaluated for the purposes of Earned Value as part of each construction task using physical measurement; and
  - (ii) the costs of rail and large long-lead equipment manufactured off-site before installation, such as transformers and packaged air conditioning units, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by Project Co to the supplier will not be credited for the purposes of Earned Value until the rail or large equipment manufactured off-site is delivered to the Lands or a bonded warehouse.
- (d) The measurement methods associated with procurement of plant, such as cranes and road vehicles, shall be in accordance with the following principles:
- (i) the costs of plant, such as cranes and road vehicles, shall be evaluated for the purposes of Earned Value using the fixed formula measurement method, based on the payment terms of the supply contract, except that [REDACTED]% of any payments made by Project Co to the supplier will not be credited for the purposes of Earned Value until the plant is delivered to the Lands or a bonded warehouse.
- (e) The measurement method to be used for the procurement of the Revenue Vehicles shall be evaluated and paid in accordance with Section 9.11 of the Project Agreement.

- (f) In order to make the measurement of Earned Value more efficient during mobilization, Project Co may choose to identify a tranche of its mobilization cost, the amount of which will be equal to the mobilization cost agreed to between DB Co and the Lenders or Lenders' Consultant of the Total Capital Cost that shall be automatically credited for the purposes of measuring Earned Value at Financial Close (the "**Mobilization Credit**"), where:
- (i) the sum of the costs identified to the Mobilization Credit and the costs identified to the cost codes from Table 1 shall remain equal to the Total Capital Cost;
  - (ii) the Mobilization Credit shall not include costs associated with the following cost codes from Table 1:
    - (A) 80.09 Other Transaction Costs during Bid and Construction Period; and
    - (B) 100.01 Financing Costs during Construction Period;
  - (iii) the scope of activity associated with the Mobilization Credit shall be documented by Project Co to the satisfaction of the Independent Certifier before the end of the first Construction Period Month in order to avoid double counting with the Earned Value for activities that are not included within the Mobilization Credit; and
  - (iv) the Earned Value for the activities included within the Mobilization Credit shall be credited as Earned Value without using a measurement method from the Earned Value Management Techniques.

ATTACHMENT G

Form of Project Co Officer Initial Capital Investment Certificate

TO: CITY OF OTTAWA AND TO: [Independent Certifier]	BY: [Project Co Name] (“Project Co”)
Project: Trillium Line Extension (“Project”)	
Date: [Date]	Project Agreement dated _____ (“Project Agreement”)

I, \_\_\_\_\_, the [insert title] of [Project Co] hereby certify for and on behalf of Project Co without incurring personal liability and confirm that the same be relied upon by the City and the Independent Certifier without further enquiry as of \_\_\_\_\_ [insert date] that:

1. I am a duly authorized [signing officer of][signatory for] Project Co, am familiar with the provisions of Project Agreement and have made reasonable investigations of corporate records and inquiries of other officers and senior personnel of Project Co in certifying the information set out below. Terms defined in the Project Agreement have the same meanings when used in this certificate.
2. Project Co has performed, satisfied and is in compliance with all of its material obligations under the Project Agreement and the other Project Documents.
3. Project Co has available to it sufficient funds to achieve Substantial Completion in accordance with the Project Agreement subject to Project Co continuing to meet its obligations under the Project Agreement and in receipt of Construction Period Payments from the City.
4. The Initial Capital Investment has been achieved in accordance with the terms and conditions set out in the Project Agreement and the Initial Capital Investment Date is [●].
5. Project Co has complied with all requirements of Applicable Law in connection with the Project, including without limitation, all requirements under the *Workplace Safety and Insurance Act, 1997* (Ontario) and the CLA. No claims for lien or notices of lien under the CLA have been received by Project Co or any Project Co Party which have not been duly released, discharged or vacated in accordance with the requirements of the CLA, if applicable. Any notice of lien or claim for lien identified in paragraph 10 of the Request for Payment to which this Certificate is attached has been released, discharged or vacated in accordance with the requirements of the CLA.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Title: \_\_\_\_\_

## SCHEDULE 21

### VARIATION PROCEDURE

#### 1. VARIATIONS

##### 1.1 Definitions

- (a) Any capitalized term not defined in this Schedule 21 shall have the meaning given to such term in the Project Agreement. The following terms shall have the following meanings:
- (i) “**City Work**” has the meaning given in Section 1.7(a).
  - (ii) “**Direct Cost**” has the meaning given in Appendix A.
  - (iii) “**Estimate**” has the meaning given in Section 1.4(a).
  - (iv) “**Overhead and Profit**” has the meaning given in Appendix B of this Schedule 21.
  - (v) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a).
  - (vi) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Maintenance and Rehabilitation Services.
  - (vii) “**Variation Confirmation**” has the meaning given in Section 1.8(a)(ii).
  - (viii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the City Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
  - (ix) “**Variation Enquiry**” has the meaning given in Section 1.3(a).
  - (x) “**Variation Procedure Meeting**” has the meaning given in Section 1.2(d) of this Schedule 21.

##### 1.2 General

- (a) The City has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 21, provided that the City shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which the City is obligated to proceed with a Variation.
- (b) The City shall be obligated to proceed with a Variation in certain circumstances specified in the Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 21.

- (c) The total compensation or payment to which Project Co is entitled with any Variation shall be limited to, and shall only be, the Direct Costs and Overhead and Profit in respect of such Variation as calculated and substantiated in accordance with this Schedule 21. Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 21.
- (d) The Parties shall:
  - (i) within 30 days following Financial Close;
  - (ii) within 30 days following the Substantial Completion Date; and
  - (iii) within 10 days following written notice being given by the City to Project Co at any time during the Project Term, which notice may be given at any time by the City, acting reasonably,hold a meeting (the “**Variation Procedure Meeting**”) to assist the Parties by promoting cooperative and effective communication with respect to matters related to Variations.
- (e) Attendance at the Variation Procedure Meeting shall consist of:
  - (i) 3 representatives appointed by the City, including the City Representative and 2 other representatives appointed by the City;
  - (ii) prior to the Substantial Completion Date, 3 representatives appointed by Project Co, including the Project Co Representative, 1 representative of the Construction Contractor, and 1 representative of the Maintenance and Rehabilitation Contractor; and
  - (iii) after the Substantial Completion Date, 2 representatives appointed by Project Co, including the Project Co Representative and 1 representative of the Maintenance and Rehabilitation Contractor.
- (f) The Independent Certifier shall be entitled to, but not required to, attend the Variation Procedure Meeting.
- (g) The purpose of the Variation Procedure Meeting shall be to:
  - (i) provide the Parties with a general overview of the Variation Procedure and to promote cooperative and effective communication with respect to matters related to Variations;
  - (ii) review the Estimate requirements as outlined in Section 1.6 and the expectations of the City to promote timely completion of the Variation processes defined in this Schedule 21; and
  - (iii) review the City’s proposed form of template for the Estimate with Project Co.

### 1.3 Variation Enquiry

- (a) If the City proposes or is obligated pursuant to the terms of the Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written Notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
  - (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
  - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether the City intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Monthly Service Payments (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
  - (iii) provide a preliminary indication of any provisions of the Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to the Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

### 1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6.

### 1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to the City’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
  - (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
  - (ii) the implementation of the Variation would:
    - (A) infringe Applicable Law;
    - (B) cause to be revoked any of the existing Permits, Licenses, Approvals and Authorizations required by Project Co to perform the Project Operations, and any such Permit, License, Approval and Authorization is not, using commercially reasonable efforts, capable of amendment or renewal; or

- (C) require any new Permits, Licenses, Approvals or Authorizations for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or the City, as applicable, be obtainable;
  - (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 21;
  - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
  - (v) the City does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 21 in respect of or in connection with the Variation;
  - (vi) the Variation would, if implemented, result in a change in the essential nature of the Project;
  - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof);
  - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts; or
  - (ix) in the case of a Variation relating to the Maintenance and Rehabilitation Services, the time specified for implementation of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to the City a written Notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

## **1.6 Estimate Requirements**

- (a) Unless the City in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to the City's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
  - (ii) any impact on the Construction Period Payments, or the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the System Infrastructure and completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);

- (iii) any impact on the performance of the Project Operations and any other impact on the Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
- (iv) any impact on expected usage of utilities, including those identified in Schedule 19 – Payment Mechanism, for the current Contract Year and subsequent Contract Years;
- (v) any amendments to the Project Agreement (including Schedule 19 – Payment Mechanism) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of the City to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
- (vi) any impact on the Direct Costs of Project Co and each Subcontractor, including:
  - (A) any Capital Expenditure and costs relating to or associated with the Maintenance and Rehabilitation Services that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or the City); 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;with the presentation of impact on Project Co's cash flows from incurring, reducing or avoiding such Direct Costs contemplated Sections 1.6(a)(vi)(A) and 1.6(a)(vi)(B) being made on a nominal cash flow and real cash flow basis;
- (vii) either, subject to Section 1.9:
  - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
  - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (viii) Project Co's confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be the Base Case Equity IRR;
- (ix) 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 proposed Variation;
- (x) any Permits, Licenses and Approvals that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation

Confirmation and Project Co or the City, as applicable, must obtain or amend such Permits, Licenses and Approvals for the Estimate to remain valid; and

- (xi) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of the Project Agreement;

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

- (b) In preparing its Estimate, 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 (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
  - (ii) except as otherwise set out herein, all costs of Project Co and each Subcontractor are limited to Direct Costs;
  - (iii) Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor shall charge overhead and profit as set out in Appendix B hereto (such amounts calculated on the basis of the applicable Direct Costs so that no mark-up of Project Co, the Construction Contractor or the Maintenance and Rehabilitation Contractor is calculated on any other mark-up of Project Co, the Construction Contractor or the Maintenance and Rehabilitation Contractor), and Project Co, the Construction Contractor and the Maintenance and Rehabilitation Contractor, as applicable, shall not charge any other amounts, margins or mark-ups;
  - (iv) the overhead and profit as set out in Appendix B hereto 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 mark-ups on any amounts charged by any Subcontractor;
  - (v) all costs of providing Project Operations, including Capital Expenditures, reflect:
    - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
    - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
    - (C) any and all changes in risk allocation;
  - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable Overhead and Profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs;

- (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred;
  - (viii) any impact of the Variation on the Maintenance and Rehabilitation Services has been detailed through an updated staffing plan, updated Maintenance Plan and updated versions of any other documentation reasonably requested by the City; and
  - (ix) if applicable, the Variation can be completed without any adjustment to the Monthly Service Payments.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation 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.
  - (d) As soon as practicable, and in any event not more than 15 Business Days after the City receives an Estimate, Project Co and the City shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
  - (e) If the City would be required by Applicable Law or any policy applicable to the City to competitively tender any contract in relation to the proposed Variation, the City may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
  - (f) The City may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify the City in writing of any consequential changes to the Estimate.
  - (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 26 – Dispute Resolution Procedure.

## **1.7 City's Right to Perform**

- (a) In respect of the System Infrastructure, after Substantial Completion, the City shall have the right to perform the subject matter of a proposed Variation (“**City Work**”) itself, or through others contracting directly with the City, without compensation to Project Co, except as specifically stated in this Project Agreement.
- (b) The City shall indemnify and save Project Co harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Project Co as a direct result of, in respect of, or arising out of the performance by the City, or any third party, of City Work, including any loss or expense related to any adverse impacts on the Project Operations.

## 1.8 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 26 – Dispute Resolution Procedure, the City shall either:
- (i) subject to Section 1.2(b) and Section 1.8(e), withdraw the Variation Enquiry by written Notice to Project Co; or
  - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.
- (b) If the City does not issue a Variation Confirmation within such 15 Business Days, then, subject to Section 1.2(b) and Section 1.8(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9:
- (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend the Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
  - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(i), all provisions of the Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
  - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
- (i) Project Co obtains such financing acceptable to the City in its sole discretion; or
  - (ii) the City in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at the City’s sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 26 – Dispute Resolution Procedure; and

- (ii) the City may at any time withdraw a Variation Enquiry and, subject to Section 1.8(f), the City shall not be obligated to Project Co in respect of a Variation until such time as the City in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by the City or the City has waived such requirement,

provided that the City may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where the City is obligated pursuant to the terms of the Project Agreement to proceed with a Variation. In such circumstances Schedule 26 – Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 21.

- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, the City shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

## **1.9 Financing**

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if the City requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and the City, provided that, prior to the Substantial Completion Date, Project Co shall not be required to seek financing from any source other than the Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and the City within 60 days of the date that the City issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless the City, in its sole discretion, waives the requirement for financing or unless the City is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide the City with details of such financing, and the City shall, in its sole discretion, determine whether Project Co should proceed with such financing. If the City determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless the City, in its sole discretion, waives the requirement for financing or unless the City is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (d) The City may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless the City in its sole discretion waives the requirement for financing or unless the City is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.

- (e) If the City waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d) then Project Co shall proceed with the Variation as set out in the Variation Confirmation and the City shall pay for the Variation as provided for in Section 1.10(a)(ii).

### **1.10 Payment**

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by the City, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
- (i) the Monthly Service Payments shall be adjusted as set out in the Variation Confirmation; and
  - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
    - (A) the City shall pay such Capital Expenditures plus applicable HST in lump sum payments based on a payment schedule agreed by the City and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by the City; and
    - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event the City and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 26 – Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by the City (such approval not to be unreasonably withheld or delayed), the process under Schedule 26 – Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by the City in time to make payments to that third party in accordance with its contract with Project Co.

- (b) The City shall make payment to Project Co within 20 Business Days of receipt by the City of invoices presented to the City in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by the City in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Lien Act* (Ontario), as applicable.

- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, the City shall provide to Project Co copies of any consent or approval issued by the City in connection with a proposed Variation.

### **1.11 Reduction in Project Operations**

- (a) If a Variation involves any reduction in Project Operations which results in savings in Direct Costs to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under the Project Agreement in an amount equal to such reduction in Direct Costs, and Project Co shall compensate the City by way of a reduction in the Monthly Service Payments (expressed in Inflation Base Date dollar amounts using the Escalation Factor as the discount rate) so as to place Project Co in no better no worse position that it would have been in had such Variation not occurred.

### **1.12 Variation Directive**

- (a) If an Estimate is not promptly agreed upon by the City and Project Co or if there is a Dispute in relation thereto or if the City, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then the City may issue a Variation Directive and, following receipt of the Variation Directive:
  - (i) Project Co shall promptly proceed with the Variation;
  - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
  - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier (if such Variation is in respect of matters prior to Final Completion), acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 26 – Dispute Resolution Procedure,

provided that, the City shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

## **2. PROJECT CO VARIATIONS**

### **2.1 General**

- (a) Project Co shall deliver to the City a written Notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

### **2.2 Project Co Variation Notice**

- (a) A Project Co Variation Notice shall:

- (i) set out details of the proposed Variation in sufficient detail to enable the City to evaluate it in full;
  - (ii) specify Project Co's reasons for proposing the Variation;
  - (iii) indicate all reasonably foreseeable implications of the Variation, including:
    - (A) costs or cost savings to the City;
    - (B) adjustments to any payments under the Project Agreement, including the Monthly Service Payments;
    - (C) schedule impact on the provision of any phase of the Works, or completion of the Works;
    - (D) any impact on the performance of the Project Operations; and
  - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If the City, in its sole discretion, elects to consider the Variation proposed by Project Co, the City may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.
- (c) Project Co shall, promptly upon demand, reimburse the City for all out-of-pocket costs and expenses reasonably incurred by the City in connection with the City's consideration of any Variation proposed by Project Co pursuant to Section 2 of this Schedule 21, including, without limitation, legal and consulting fees and disbursements, regardless of whether (i) a Variation Enquiry or Estimate is issued in connection therewith or (ii) such Variation is implemented.

### **3. SMALL WORKS**

#### **3.1 General**

- (a) After the Substantial Completion Date, with respect to the System Infrastructure, Project Co shall carry out all Small Works requested by the City.
- (b) If Small Works are requested by the City, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide the City with a price for carrying out the Small Works.
- (c) If Project Co's price is accepted by the City, in its sole discretion, Project Co shall carry out the Small Works for such price.
- (d) The City may at any time, in its sole discretion, including if the City does not accept the price proposed by Project Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 21, other than this Section 3, shall apply.
- (e) Project Co's price shall include only its Direct Costs, as calculated in accordance with Appendix A, together with applicable margins as set out in Appendix B.

**3.2 Project Co to Minimize Inconvenience**

- (a) Project Co shall notify the City of the estimated duration of any Small Works so that the City and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to the City. Project Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

## APPENDIX A

### 1. CALCULATION OF DIRECT COSTS

1.1 Subject to Section 1.2 of this Appendix A, the term “Direct Cost” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or each Subcontractor, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred by Project Co or the Subcontractors, as applicable, in respect of or in relation to the Project:

- (i) wages and benefits paid for labour in the direct employ of Project Co or each Subcontractor while performing that part of the Project Operations on the Lands;
- (ii) salaries, wages and benefits of Project Co’s or each Subcontractor’s personnel when stationed at the office on the Lands in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of Project Co’s or each Subcontractor’s office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co or any Subcontractor, as applicable, for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) the cost of materials, products, supplies and equipment that are consumed in the performance of the Variation;
- (vi) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (vii) deposits lost;
- (viii) except as otherwise set out in this Schedule 21, a reasonable amount of profit consistent with prevailing market rates that is charged by any Subcontractor, other than the Construction Contractor, the Maintenance Contractor and any entity not at arms-length from Project Co or any Equity Provider;
- (ix) the amount paid for any design services;
- (x) the cost of third party quality assurance required by the City, such as independent inspection and testing services;

- (xi) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of the City to pay HST payable by it under the Project Agreement), but excluding:
  - (A) HST;
  - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
  - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
  - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xiii) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under the Project Agreement;
- (xiv) termination payments which are required under Applicable Law to be made to employees of Project Co, Maintenance and Rehabilitation Contractor or Construction Contractor reasonably and properly incurred by Project Co, Maintenance and Rehabilitation Contractor or Construction Contractor arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xv) the cost of Project Co obtaining financing in respect of the subject Variation as determined pursuant to Section 1.9, including additional financing costs related to any delay caused by the implementation of such Variation;
- (xvi) the cost of any additional insurance or performance security required or approved by the City;
- (xvii) the cost of obtaining all Project Co Permits, Licenses and Approvals;
- (xviii) the costs associated with the changes in the Project Co Services as identified in the updated staffing plan, updated Maintenance Plan and other documentation reasonably requested by the City;
- (xix) the cost of competitively tendering any contract in relation to the proposed Variation that is required by Contracting Authority, including as a result of any Applicable Law or any policy applicable to Contracting Authority; and

- (xx) except as specified in Section 1.2(vii), reasonable fees and disbursements of Project Co's legal advisors.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by [REDACTED] hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the City of Ottawa;
- (v) the amount paid for wages, salaries and Subcontracts with Subcontractors shall generally reflect commercially competitive rates available in the City of Ottawa;
- (vi) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co or any Project Co Party to exercise reasonable care and diligence in its attention to the execution of that part of the Project Operations (including any cost due to any negligence, improper work, deficiencies or breaches of contract by Project Co and/or any Project Co Party);
- (vii) the Direct Cost shall not include any reasonable fees and disbursements of Project Co's legal advisors incurred in connection with Small Works or the preparation of the Estimate; and
- (viii) Direct Costs shall be quantifiable and supported by evidence and proper documentation such as invoices, proof of payments, and detailed hourly rate information as required by the City. Any Direct Cost item claimed as a percentage of other Direct Costs will not be permissible, unless approved by the City in writing.

**APPENDIX B**

**APPLICABLE MARGINS**

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	For Variations under \$[REDACTED]	For Variations between \$[REDACTED] and \$[REDACTED]	For Variations over \$[REDACTED]
Project Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Maintenance and Rehabilitation Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Maintenance and Rehabilitation Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Project Co and Construction Contractor re: Cash Allowance Items	[REDACTED]%	[REDACTED]%	[REDACTED]%

SCHEDULE 22

COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

Any capitalized term not defined in this Schedule 22 shall have the meaning given to such term in the Project Agreement. The following terms shall have the following meanings:

- (a) “**Adjusted Estimated Fair Value**” means the Estimated Fair Value adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce the Estimated Fair Value (whether or not such amounts have been set off by the City pursuant to Section 3.3(f));
  - (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value:
    - (A) the Post Termination Service Amounts actually paid by the City to Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that the City is entitled to set off or deduct; and
  - (iii) the aggregate of the following amounts shall be added, without duplication, to the Estimated Fair Value:
    - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated; and
    - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(a)(iii)(A),  
  
to the extent that:
    - (C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) have not been directly taken into account in calculating the Estimated Fair Value; and
    - (D) the City has received such amounts in accordance with the Project Agreement.

- (b) “**Adjusted Highest Qualifying Tender Price**” means the price offered by the Qualifying Tenderer (if any) with the highest tender price, adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce such highest tender price (whether or not such amounts have been set off by the City pursuant to Section 3.3(f));
  - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
    - (A) the Post Termination Service Amounts actually paid by the City to Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that the City is entitled to set off or deduct; and
  - (iii) the aggregate of the following amounts shall be added, without duplication, to such highest tender price:
    - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Qualifying Tender is received; and
    - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(b)(iii)(A),  
  
to the extent that:
    - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) have not been directly taken into account in that Qualifying Tender; and
    - (D) the City has received such amounts in accordance with the Project Agreement.
- (c) “**Breach of Refinancing Termination Sum**” has the meaning given to it in Section 6.1(b) of this Schedule 22.
- (d) “**City Default Termination Sum**” has the meaning given in Section 2.1(b) of this Schedule 22.
- (e) “**Compensation Date**” means either:
- (i) if Section 3.3 applies, the earlier of:
    - (A) the date that the New Agreement is entered into; and
    - (B) the date on which the City pays the Adjusted Highest Qualifying Tender Price to Project Co; or

- (ii) if Section 3.4 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.
- (f) “**Debt Amount**” means at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Lenders to Project Co, together with all interest accrued thereon at that time, provided that at any time where any portion of the interest payable to the Lenders is subject to the Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Lenders shall be calculated based on the fixed rate payable by Project Co under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Lenders under the Project Agreement shall be construed accordingly. For greater certainty, the Debt Amount excludes the Debt Makewhole.
- (g) “**Debt Makewhole**” means, (i) at any time, any amount (other than the Debt Amount) then due and payable to the Lenders under the Lending Agreements with respect to the Debt Amount, including any “make whole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Lenders pursuant to the Lending Agreements with respect to the Debt Amount; and (ii) any swap breakage costs (less breakage benefits), if any, then due and payable to the Hedge Provider(s) under the Hedging Agreement(s) entered into with respect to the Debt Amount.
- (h) [REDACTED]
- (i) “**Discount Rate**” means a rate equal to  $((A + B) / C) + D$ , where:
- A = the product of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the rate of interest applicable to such amount as shown in the Financial Model at Financial Close.
- B = the product of the Equity Capital as at Financial Close and the Base Case Equity IRR.
- C = the sum of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the Equity Capital as at Financial Close.
- D = the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation, minus the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements as shown in the Financial Model at Financial Close.
- (j) “**Employee Termination Payments**” means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party as a direct result of terminating the Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
- (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or

- (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (k) “**Estimated Fair Value**” means the amount determined in accordance with Section 3.4.
- (l) “**Invoice Date**” means the date that is the later of:
  - (i) the date on which the City receives an invoice from Project Co for the relevant termination sum; and
  - (ii) the date on which the City receives the supporting evidence required pursuant to Section 8.1(a).
- (m) “**Liquid Market**” means that there are 2 or more willing parties (each of whom is capable of being a Suitable Substitute and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of maintenance and rehabilitation services (and if the Termination Date occurs prior to Substantial Completion, design and construction services) to light rail transit systems under an alternative financing and procurement or similar model (where such agreements are the same as or similar to the Project Agreement) such that the retendering process in Section 3.3 can reasonably be expected to result in a highest Qualifying Tender price broadly in the range of values that would reasonably be expected to be achieved calculating the Estimated Fair Value under Section 3.4.
- (n) “**Market Value Availability Deduction Amount**” means for any Payment Period or part of a Payment Period, an amount equal to the Deductions for Availability Failures that were made from the Monthly Service Payment under the Payment Mechanism in the Payment Period immediately preceding the Termination Date which were unavailable at the Termination Date but which have subsequently become available, whether as a result of the City incurring Rectification Costs or otherwise.
- (o) “**Maximum Service Payment**” means the Monthly Service Payments payable at any time before any Deductions under the Payment Mechanism but allowing for indexation under the Payment Mechanism.
- (p) “**New Agreement**” means an agreement on substantially the same terms and conditions as the Project Agreement as at the Termination Date, but with the following amendments:
  - (i) if the Project Agreement is terminated prior to the Substantial Completion Date, then the Longstop Date shall be extended by a period to allow a New Project Co to achieve Substantial Completion prior to such extended Longstop Date;
  - (ii) any accrued Failure Points shall be cancelled;
  - (iii) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
  - (iv) any other amendments which do not adversely affect Project Co.

- (q) “**New Project Co**” means the person who has entered or who will enter into the New Agreement with the City.
- (r) “**No Default Payment Compensation Amount**” means, with respect to an amount and a specified period of time, such amount multiplied by (i) such period of time in days divided by the actual number of days in the current year multiplied by (ii) the rate of interest per annum in effect on each such day quoted by the National Bank of Canada from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- (s) “**Non-Default Termination Sum**” has the meaning given in Section 4.1(b).
- (t) “**Post Termination Service Amount**” means, for the purposes of Section 3.3, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment which would have been payable under the Project Agreement had the Project Agreement not been terminated, less an amount equal to the aggregate (without double counting) of:
- (i) the Market Value Availability Deduction Amount for that Payment Period; and
  - (ii) the Rectification Costs incurred by the City in that Payment Period.
- (u) “**Qualification Criteria**” means the criteria that the City requires tenderers to meet as part of the Tender Process, which (subject to compliance with Applicable Law) shall include the following:
- (i) that the tenders confirm acceptance of the New Agreement terms;
  - (ii) that the tenderers have, and are able to demonstrate on an indicative basis on request, the financial ability to pay the lump sum tendered;
  - (iii) that tenderers may only bid on the basis of a single lump sum payment to be paid by the tenderer;
  - (iv) that the tenderer is experienced in performing the Maintenance and Rehabilitation Services or similar services;
  - (v) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Project Operations; and
  - (vi) any other tender criteria established by the City, acting reasonably.
- (v) “**Qualifying Tender**” means a tender that meets all of the Qualification Criteria.
- (w) “**Qualifying Tenderer**” means a tenderer who submits a Qualifying Tender.
- (x) “**Rectification Costs**” means, for the purposes of any Termination Date that occurs after the Substantial Completion Date, an amount equal to the reasonable and proper costs incurred by the City in a particular Payment Period or part of a Payment Period in ensuring that the Maintenance and Rehabilitation Services are carried out.

- (y) “**Subcontractor Losses**” means, subject to Project Co’s obligations under the Project Agreement to limit any compensation to Subcontractors:
- (i) the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of the Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or any Subcontractors fail to take commercially reasonable steps to mitigate such amount; and
  - (ii) the amount reasonably and properly payable by Project Co to the Maintenance and Rehabilitation Contractor under the terms of the Maintenance and Rehabilitation Contract as a direct result of the termination of the Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount,
- provided that, in both cases, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
- (iii) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
  - (iv) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties’ obligations in relation to the Project; or
  - (v) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (z) “**Tender Costs**” means the reasonable and proper costs of the City incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (aa) “**Tender Process**” means the process by which the City requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new Project Co, in accordance with Section 3.3.
- (bb) “**Tender Process Monitor**” has the meaning given in Section 3.3(g).

## **2. COMPENSATION ON TERMINATION FOR CITY DEFAULT OR CONVENIENCE**

### **2.1 Compensation**

- (a) If Project Co terminates the Project Agreement pursuant to Section 44.2(a)(ii) of the Project Agreement or the City terminates the Project Agreement pursuant to Section 45.3 of the Project Agreement, the City shall pay to Project Co the City Default Termination Sum.
- (b) The “**City Default Termination Sum**” shall be an amount equal to the aggregate of:

- (i) the sum of the Debt Amount and the Debt Makewhole;
- (ii) **[REDACTED]**;
- (iii) any amount payable by the City to Project Co in accordance with Sections 41.2(b) and 42.2(b) of the Project Agreement;
- (iv) the Employee Termination Payments and the Subcontractor Losses;
- (v) Construction Period Payments payable by the City in accordance with Schedule 20 on or prior to the Termination Date;
- (vi) any reasonable costs properly incurred by Project Co to wind up its operations; and
- (vii) an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination 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 Termination Date, gives a nominal internal rate of return to the Termination 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);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (viii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where the City is required to procure insurances and to make proceeds available to Project Co under the Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and the Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and the Project Agreement) to the City and, at no additional cost to Project Co, give the City reasonable assistance in prosecuting such claims;
- (ix) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to the City pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:

- (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (x) amounts which the City is entitled to set off pursuant to Section 32.12(a)(i) of the Project Agreement,
- provided that the City Default Termination Sum shall never be less than the aggregate of the Debt Amount and the Debt Makewhole.
- (c) To the extent that such assets and rights referred to in Section 2.1(b)(ix) are not realized and applied pursuant thereto, Project Co shall, on payment of the City Default Termination Sum, assign such assets and rights to the City.
  - (d) The City shall pay the City Default Termination Sum in accordance with Section 8.

### **3. COMPENSATION FOR PROJECT CO DEFAULT**

#### **3.1 Compensation**

- (a) If the City terminates the Project Agreement pursuant to Section 43 of the Project Agreement (including, without limitation, as a result of a Project Co Event of Default for failing to comply with Section 58 of the Project Agreement), the City shall pay to Project Co either the Adjusted Highest Qualifying Tender Price according to the retendering procedure set out in Section 3.3 or the Adjusted Estimated Fair Value according to the no retendering procedure set out in Section 3.4, as applicable.

#### **3.2 Retendering Election**

- (a) The City shall be entitled to retender the provision of the remaining Project Operations to be performed under a proposed New Agreement in accordance with Section 3.3 and the provisions thereof shall apply if:
  - (i) the City notifies Project Co on or before the date falling 30 days after the Termination Date; and
  - (ii) there is a Liquid Market,but, otherwise, the City shall require a determination in accordance with the no retendering procedure set out in Section 3.4 and the provisions thereof shall apply.
- (b) Until it is determined that the basis for determining the compensation to Project Co will be the no retendering procedure set out in Section 3.4, Project Co shall continue to perform the

Maintenance and Rehabilitation Services and the City shall pay Project Co in accordance with Section 3.3(e).

### 3.3 Retendering Procedure

- (a) The objective of the Tender Process shall be to enter into a New Agreement with a Qualifying Tenderer.
- (b) The City shall commence the Tender Process promptly after delivering the notice pursuant to Section 3.2(a) and use commercially reasonable efforts to complete the Tender Process as soon as practicable.
- (c) The City shall, as soon as reasonably practicable, notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.
- (d) Project Co authorizes the release of any information by the City under the Tender Process which would otherwise be prevented under Section 50 of the Project Agreement that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to perform the Maintenance and Rehabilitation Services, and, for all or any part of a Payment Period falling within the period from the Termination Date to the Compensation Date, the City shall pay to Project Co:
  - (i) the Post Termination Service Amount for each completed Payment Period, on or before the date falling 20 Business Days after the end of that Payment Period; and
  - (ii) the Post Termination Service Amount for the period from the end of the last completed Payment Period until the Compensation Date, on or before the date falling 30 days after the Compensation Date.
- (f) If any Post Termination Service Amount is negative, then the amount by which the Post Termination Service Amount is negative shall be carried forward and may be set off against any future positive Post Termination Service Amounts.
- (g) Project Co may, at its own cost, appoint a person (the “**Tender Process Monitor**”) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co on the City’s compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with the City in a form acceptable to the City and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to the City as to compliance with the Tender Process. The City shall not be bound to consider or act upon such representations. The Tender Process Monitor will not disclose confidential information to Project Co but shall be entitled to advise Project Co on whether it considers that the City has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Qualifying Tender Price.
- (h) As soon as practicable after tenders have been received, the City shall, acting reasonably, review and assess the Qualifying Tenders and shall notify Project Co of the Adjusted Highest Qualifying Tender Price.

- (i) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Tender Price to dispute resolution in accordance with Schedule 26 – Dispute Resolution Procedure, the City shall, irrespective of such Dispute, be entitled to enter into a New Agreement.
- (j) The City shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 8.
- (k) The City may elect, by Notice to Project Co at any time prior to the City ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no retendering procedure set out in Section 3.4. In addition, the City shall follow such no retendering procedure if:
  - (i) only one Qualifying Tender is received; or
  - (ii) a New Agreement has not been entered into and compensation paid under Section 8.2 on or before the date falling 18 months after the Termination Date.
- (l) Project Co may give written Notice to the City at any time after the Termination Date and prior to the date for receipt of Qualifying Tenders that a Liquid Market does not exist (or shall not exist on the date for receipt of Qualifying Tenders). If the City is in agreement with such Notice, the provisions of Section 3.4 shall apply. If the City provides a written response within 10 Business Days of receipt of such Notice stating that it is in disagreement with that Notice or if no written response is provided by the City within such 10 Business Day period, the matter shall be referred for determination in accordance with Schedule 26 – Dispute Resolution Procedure.

### **3.4 No Retendering Procedure**

- (a) Subject to Section 3.4(b), if the provisions of this Section 3.4 apply, Project Co shall not be entitled to receive any Post Termination Service Amount.
- (b) If the City elects to require a determination in accordance with this Section 3.4 after it has elected to follow the procedure set out in Section 3.3, then the City shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date in accordance with Section 3.3.
- (c) In determining the Estimated Fair Value, the Parties shall be obliged to follow the principles set out below:
  - (i) All forecast amounts should be calculated in nominal terms as at the Termination Date. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment date(s), as set out in the Project Agreement, will be made and, if made, will use an assumed inflation rate of [REDACTED]% per annum.
  - (ii) The Estimated Fair Value shall be calculated using the following formula (without double counting):

$$(A - B - C) - D$$

Where:

A = the present value of the following payments to the extent that, as at the Termination Date, such payments have not yet been paid and are forecast to be made from the Termination Date to the Expiry Date, assuming that no Deductions will be made over that

period, discounted at the Discount Rate: the Monthly Service Payments, the Substantial Completion Payment and the Construction Period Payments

B = a contingency amount based on a reasonable risk assessment of any cost overruns that may reasonably arise (including in respect of any matter referred to in this Section 3.4(c)(ii)) whether or not forecast in the relevant base case and represented in the Financial Model as of the date of Financial Close, discounted at the Discount Rate

C = the present value of the costs of obtaining or performing the Maintenance and Rehabilitation Services reasonably forecast to be incurred by the City from the Termination Date to the Expiry Date to the standard required, discounted at the Discount Rate

D = any rectification costs (including Rectification Costs) that would not arise at the time or in the future had the termination not occurred, and that are reasonably required to deliver the Project Operations to the standard required, including, if applicable, to complete the Works, any costs reasonably forecast to be incurred by the City for up-front finance fees and related costs (excluding principal and interest payments), and any other additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs (including Rectification Costs) for the purposes of this item D), the aggregate of:

- (A) any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 24 – Insurance and Performance Security Requirements; and
- (B) amounts payable by the City in respect of Capital Expenditures under the Project Agreement which have not been paid,

discounted at the Discount Rate.

- (iii) The amount of  $(A - B - C)$  as defined in Section 3.4(c)(ii) shall be no greater than the Non-Default Termination Sum.
  - (iv) All costs referred to in Section 3.4(c)(ii) are to be forecast at a level that will deliver the Maintenance and Rehabilitation Services and other Project Operations to the standards required by the Project Agreement and to achieve the full Monthly Service Payments (without Deductions).
  - (v) The calculation will take into consideration the obligations of the Parties with respect to allowances and payments under the Project Agreement.
- (d) If the Parties cannot agree on the Estimated Fair Value, then the Estimated Fair Value shall be determined in accordance with Schedule 26 – Dispute Resolution Procedure.
  - (e) The City shall pay the Adjusted Estimated Fair Value in accordance with Section 8.

**4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION BY CONTRACTING AUTHORITY FOR RELIEF EVENT**

**4.1 Consequences**

(a) If the City terminates the Project Agreement pursuant to Section 45.1 of the Project Agreement or if either of the Parties terminate the Project Agreement pursuant to Section 45.2 of the Project Agreement, the City shall pay to Project Co the Non-Default Termination Sum.

(b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of, but without duplication:

(i) the Debt Amount and the Debt Makewhole;

(ii) **[REDACTED]**;

(iii) any amount payable by the City to Project Co in accordance with Sections 41.2(b) and 42.2(b) of the Project Agreement;

(iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit relating to any period or costs after the Termination Date);

(v) Construction Period Payments, Substantial Completion Payment and Monthly Service Payments payable by the City in accordance with Schedule 19, Schedule 20 and Schedule 21, as applicable, on or prior to the Termination Date, in each case to the extent not included in the Debt Amount Subcontractor Losses or Equity Capital amount pursuant to Sections 4.1(b)(i), (ii), (iv) or (vi); and

(vi) an amount equal to the Equity Capital as at Financial Close, less all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date, provided that where such amount is negative, it shall be deemed instead to be zero;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

(vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where the City is required to procure insurances and to make proceeds available to Project Co under the Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and the Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third

parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and the Project Agreement) to the City and, at no additional cost to Project Co, give the City reasonable assistance in prosecuting such claims; and

- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to the City pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which the City is entitled to set off pursuant to Section 32.12(a)(i) of the Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Debt Amount and the Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(viii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to the City.
- (d) The City shall pay the Non-Default Termination Sum in accordance with Section 8.

## 5. INTENTIONALLY DELETED

## 6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING

### 6.1 Consequences

- (a) If the City terminates the Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 7.3 of the Project Agreement or Schedule 27 – Refinancing or the Lenders assign, transfer or otherwise dispose of any right, title or interest they may have in, or obligations they may have pursuant to, the Security Documents in breach of the Lenders' Direct Agreement, the City shall pay to Project Co the Breach of Refinancing Termination Sum.
- (b) The "**Breach of Refinancing Termination Sum**" shall be an amount equal to the aggregate of:
  - (i) the Debt Service Amount and the Debt Makewhole;
  - (ii) any amount payable by the City to Project Co in accordance with Sections 41.2(b) and 42.2(b) of the Project Agreement;

- (iii) Construction Period Payments payable by the City in accordance with Schedule 20 on or prior to the Termination Date; and
- (iv) the following amounts calculated in respect of the Construction Contractor and the Maintenance and Rehabilitation Contractor which Project Co can demonstrate will be paid directly to such persons:
  - (A) the Employee Termination Payments; and
  - (B) as applicable, the Construction Contractor's and the Maintenance and Rehabilitation Contractor's out-of-pocket costs incurred as a direct result of termination of the Project Agreement (excluding any breakage fees and overhead and profit of the Construction Contractor and the Maintenance and Rehabilitation Contractor, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (v) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where the City is required to procure insurances and to make proceeds available to Project Co under the Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and the Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and the Project Agreement) to The City and, at no additional cost to Project Co, give the City reasonable assistance in prosecuting such claims;
- (vi) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to the City pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and

- (vii) amounts which the City is entitled to set off pursuant to Section 32.12(a)(i) of the Project Agreement.
- (c) To the extent that such assets and rights referred to in Section 6.1(b)(vi) are not realized and applied pursuant thereto, Project Co shall, on payment of the Breach of Refinancing Termination Sum, assign such assets and rights to The City.
- (d) The City shall pay such termination sum in accordance with Section 8 of this Schedule 22.

## **7. CONSEQUENCES OF TERMINATION BY PROJECT CO FOR RELIEF EVENT**

### **7.1 Consequences**

- (a) If Project Co terminates the Project Agreement pursuant to Section 45.1 of the Project Agreement, the City shall pay to Project Co a termination sum equivalent to the greater of (i) Non-Default Termination Sum and (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 22.
- (b) The City shall pay such termination sum in accordance with Section 8.1 or 8.3, as applicable.

## **8. GENERAL**

### **8.1 Payment and Interest Following Non-Project Co Default Termination**

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4 or 6, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to the City an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to the City, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) The City shall:
  - (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date; and
  - (ii) indemnify Project Co as provided in Section 54.2(c) of the Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
    - (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and
    - (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (c) In respect of the termination payments to be made pursuant to any of Sections 4 or 6, if the applicable termination sum is negative, the City shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify the City as provided in Section 54.1(e) of the Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60

days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

## **8.2 Payment and Interest Following Project Co Default - Retendering Procedure**

- (a) Following the retendering procedure set out in Section 3.3, the City shall pay to Project Co the Adjusted Highest Qualifying Tender Price no later than the date falling 30 days after the later of:
- (i) the date on which the City enters into the New Agreement with the New Project Co; and
  - (ii) if Project Co has, pursuant to Section 3.3(i), referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with Schedule 26 – Dispute Resolution Procedure, the date on which the Dispute is finally determined, provided that the City shall pay the undisputed amount on the date referred to in Section 8.2(a)(i),

and the City shall indemnify Project Co as provided in Section 56.2(c) of the Project Agreement on the Adjusted Highest Qualifying Tender Price on the basis that the due date for the payment of the Adjusted Highest Qualifying Tender Price was the date on which the City enters into the New Agreement with the New Project Co:

- (iii) in an amount equivalent to the No Default Payment Compensation Amount from the due date up to (and including) the date following 30 days from after the later of the dates determined under Section 8.2(a)(i) and (ii) above (and for clarity, on such portions of the Adjusted Highest Qualifying Tender Price in the circumstance described in paragraph (ii) above); and
  - (iv) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (b) If the Adjusted Highest Qualifying Tender Price is negative, the City shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the New Agreement, pay the City the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify the City as provided in Section 56.1(e) of the Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

## **8.3 Payment and Interest Following Project Co Default - No Retendering Procedure**

- (a) If the City follows the no retendering procedure set out in Section 3.4, the City shall pay to Project Co the Adjusted Estimated Fair Value no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.4, together with interest on such amount calculated in accordance with Section 8.1(b)(ii).
- (b) If the Adjusted Estimated Fair Value is negative, the City shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay the City the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter indemnify the City as provided in Section 54.1(e) of the Project Agreement in respect

of any damages suffered or incurred on such amount on the basis that the due date for payment of the negative Adjusted Estimated Fair Value was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

**8.4 Costs**

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 22 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

**8.5 Undisputed Amounts**

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 8 and the disputed amount shall be dealt with in accordance with Schedule 26 – Dispute Resolution Procedure.

**8.6 Outstanding Debt Amount**

- (a) Subject to Section 8.5 of this Schedule 22, the City shall be entitled to rely on a certificate of the Lenders' Agent as conclusive evidence as to the Debt Amount and Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Debt Amount or Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge City's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

**8.7 Set-off**

- (a) City shall be entitled to set off against the Non-Default Termination Sum or the City Default Termination Sum, such amounts not already taken into account in calculating the relevant Compensation Payment that City is entitled to set off or withhold pursuant to the Project Agreement, provided that the amount paid to Project Co on account of the Non-Default Termination Sum or City Default Termination Sum, as the case may be, shall never be less than the aggregate of the Debt Amount and the Debt Makewhole Amount.

**SCHEDULE 23**

**EXPIRY TRANSITION PROCEDURE**

**1. Independent Inspector**

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

**2. Condition of the System Infrastructure on Expiry**

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

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

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

### 3. System Infrastructure Inspections and Performance Demonstrations

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

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

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

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

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

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

#### 4. Payments To and From Escrow Account

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

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

## **5. Project Co Not Relieved of Obligations**

5.1 Notwithstanding:

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

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

## **6. Final System Infrastructure Condition Report**

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

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

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

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

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

**SCHEDULE 24**

**INSURANCE AND PERFORMANCE  
SECURITY REQUIREMENTS**

**ARTICLE 1  
CONSTRUCTION PERIOD INSURANCE COVERAGE**

- 1.1 Subject to Article 8, from and after execution of the Project Agreement and, until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the City of Ottawa Construction Insurance Program (COCIP) the following insurances as further described in Appendix A to this Schedule 24:
- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
  - (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
  - (c) Project Specific Professional Liability; and
  - (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).
- 1.2 Subject to Article 8, from and after execution of the Project Agreement, until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A:
- (a) Automobile Liability;
  - (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Design and Construction Works) with respect to off-site/Lands operations and activities;
  - (c) Aircraft and Watercraft Liability (if any exposure);
  - (d) “All Risks” Marine Cargo (if any exposure);
  - (e) “All Risks” Contractors’ Equipment;
  - (f) Comprehensive Crime; and
  - (g) WSIB.

**ARTICLE 2  
MAINTENANCE PERIOD INSURANCE COVERAGE**

- 2.1 Subject to Article 8, from and after the Substantial Completion Date and until the Termination Date, in respect of coverage for the Maintenance and Rehabilitation Services during the Maintenance Period Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A:
- (a) “All Risks” Property;

- (b) Boiler and Machinery;
- (c) Commercial General Liability and Non-Owned Automobile Liability;
- (d) Automobile Liability; and
- (e) WSIB.

**ARTICLE 3  
NO LIMIT ON RECOVERY**

- 3.1 Notwithstanding any other provision of the Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 24 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by the City or by Project Co, shall in no way limit Project Co's liability or obligations to the City or the City's liability or obligations to Project Co, as applicable.

**ARTICLE 4  
ADDITIONAL COVER**

- 4.1 Without prejudice to the other provisions of this Schedule 24, the City and Project Co shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.
- 4.2 the City reserves the right to require Project Co to purchase such additional insurance coverage as the City may reasonably require. the City also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Project Operations, contract value, industry standards, and availability of insurance) as the City may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by the City and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of the City.

**ARTICLE 5  
RESPONSIBILITY FOR DEDUCTIBLES**

- 5.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 24. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

**ARTICLE 6  
COOPERATION WITH INSURER'S CONSULTANT**

- 6.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of the Project Agreement, then the City and Project Co shall, and shall require the City Parties and the Project Co Parties to:

- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
- (b) allow the insurer and its consultant to attend meetings between Project Co and the City (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

## ARTICLE 7 BENCHMARKING OF INSURANCE COSTS

7.1 For purposes of this Article 7, the following terms shall have the following meanings:

- (a) “**Actual Relevant Insurance Cost**” means the aggregate of (i) the annual insurance premiums reasonably incurred by Project Co to maintain (or cause to be maintained) the Relevant Insurance at the Relevant Insurance Inception Date and during the Insurance Review Period, but excluding Taxes and all broker’s fees and commissions.
- (b) “**Adjusted Base Relevant Insurance Cost**” means, if the Actual Relevant Insurance Cost exceeds the Base Relevant Insurance Cost for a given Insurance Review Period, an amount, based on the Joint Insurance Cost report, that represents the Base Relevant Insurance Cost as adjusted to take into consideration any portion of the difference between the Actual Relevant Insurance Cost and the Base Relevant Insurance Cost that is attributable solely to Project Co having underpriced the Base Relevant Insurance Cost in Project Co's proposal in response to the Request for Proposals. For greater certainty, the Base Relevant Insurance Cost will be increased by any amount by which Project Co underpriced the Base Relevant Insurance Cost for the given Insurance Review Period.
- (c) “**Base Relevant Insurance Cost**” means the aggregate of the annual insurance premiums which were projected (as set out in the Financial Model) to be incurred by Project Co to maintain (or cause to be maintained) the Relevant Insurance during the Insurance Review Period, which amounts exclude Taxes and all broker’s fees and commissions.
- (d) “**Insurance Cost Differential**” means an amount, based on the Joint Insurance Cost Report, equal to  $(ARIC - ABRIC) \pm PIC$  where:

ARIC is the Actual Relevant Insurance Cost;

ABRIC is the Adjusted Base Relevant Insurance Cost; and

PIC is any Project Insurance Change.

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase in the ARIC relative to the ABRIC, the Project Insurance Change shall have a negative value and, in the event that there is a net decrease in the ARIC relative to the ABRIC, the Project Insurance Change shall have a positive value.

- (e) “**Insurance Review Date**” means the Relevant Insurance Inception Date and thereafter each anniversary of the Relevant Insurance Inception Date, except where such date lies beyond the end of the Project Term, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the Expiry Date.

- (f) “**Insurance Review Period**” means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on the Relevant Insurance Inception Date, except where the end of such period lies beyond the end of the Project Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Project Term.
- (g) “**Project Insurance Change**” means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:
  - (i) other than in respect of claims or re-ratings arising out of acts or omissions of the City, an City Party, an Operator or a System User, the claims history or re-rating of Project Co or any Project Co Party;
  - (ii) the effect of any change in deductible unless:
    - (1) such change is attributable to circumstances generally prevailing in the worldwide insurance market; and
    - (2) in respect of the Relevant Insurance, such change is not attributable to claims made as the result of acts or omissions of Project Co or any Project Co Party; and
  - (iii) any other issue or factor other than circumstances generally prevailing in the worldwide insurance market.

For greater certainty, any amount by which Project Co underpriced the Base Relevant Insurance Cost in its proposal in response to the Request for Proposals shall not be considered a Project Insurance Change.

- (h) “**Relevant Insurance**” means all policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with Article 2.
- (i) “**Relevant Insurance Inception Date**” means the date on which the Relevant Insurance is first providing active insurance cover to Project Co and the City being a date no earlier than the Substantial Completion Date.

7.2 No later than 60 days prior to each Insurance Review Date, Project Co’s insurance broker shall, at Project Co’s sole cost and expense, prepare a report on behalf of both Project Co and the City (the “**Joint Insurance Cost Report**”), which contains the following information at the Relevant Insurance Inception Date, and thereafter for the relevant Insurance Review Period:

- (a) a full breakdown of the Actual Relevant Insurance Cost;
- (b) the Base Relevant Insurance Cost;
- (c) an assessment and quantification of each Project Insurance Change, together with the reasons therefor;
- (d) the opinion of Project Co’s insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact

- of each of the factors and quantifying the amount attributable to each factor along with an assessment of the Adjusted Base Relevant Insurance Cost;
- (e) the calculation of the Insurance Cost Differential; and
  - (f) evidence satisfactory to the City, acting reasonably, of any changes to circumstances generally prevailing in the worldwide insurance market that are claimed to account for the Insurance Cost Differential.
- 7.3 The Monthly Service Payment will be subject to an adjustment in the amount of the Insurance Cost Differential (the “**Insurance Adjustment**”) in accordance with Schedule 19 – Payment Mechanism.

## ARTICLE 8 UNINSURABLE RISKS

- 8.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 24 and for which, at any time after the date of the Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 24 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk:
    - (i) where Applicable Laws require that the insurer must be licensed in the Province of Ontario to insure such a risk, by insurers licensed in the Province of Ontario; or
    - (ii) where Applicable Laws do not require that the insurer must be licensed in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of the Project Agreement; or
  - (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.
  - (c) Project Co has the onus of demonstrating, to the City’s reasonable satisfaction that the foregoing definition applies to a particular risk.
- 8.2 Project Co shall notify the City as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide the City with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 8.3 Project Co and the City shall, as soon as possible following the provision of the notice referred to in Section 8.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and the City are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 8.4 In the event that Project Co and the City, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15

Business Days of the expiry of the period referred to in Section 8.2, the City may, in its absolute discretion, either:

- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case the Project Agreement shall continue in full force and effect; or
- (b) terminate the Project Agreement in accordance with Section 47.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 47.2 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

8.5 On the occurrence of an Uninsurable Risk, the City may, in its absolute discretion, either:

- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case the Project Agreement shall continue in full force and effect; or
- (b) terminate the Project Agreement in accordance with Section 45.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 45.2 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

8.6 With respect to any Uninsurable Risk:

- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) Subject to Section 8.6(a), Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.

8.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule 24 in respect of the risk and the provisions of this Section 8 shall no longer apply to such risk.

8.8 From and after the Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 24, and may make mutually agreed changes thereto.

**ARTICLE 9  
DAMAGE OR DESTRUCTION**

- 9.1 In the event of damage to, or destruction of, all or any part of the System Infrastructure for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under the Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the System Infrastructure or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations, all in accordance with the terms of the Insurance Trust Agreement provided that, in respect of a Revenue Vehicle, this Section 9.1 shall not apply, and the provisions of Sections 9.2, 20.1 and 20.2 shall apply.
- 9.2 In respect of insurance proceeds received by the City under the provisions of Section 20.2, the City shall make such insurance proceeds available to Project Co, to be solely applied by Project Co in the reinstatement, restoration or replacement of the Revenue Vehicles necessary for the carrying out of the Project Operations.

**ARTICLE 10  
SUBCONTRACTORS**

- 10.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 24, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which the City may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 10.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 24 to be obtained (or caused to be obtained) by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;
  - (b) remove the Subcontractor from the Lands and ensure that such Subcontractor does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
  - (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 24, replace the Subcontractor with a new Subcontractor who can be covered by insurance required by this Schedule 24 or who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

**ARTICLE 11  
RENEWAL**

- 11.1 Project Co shall provide to the City, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by Project Co pursuant to this Schedule 24, evidence of the renewal of each such policy satisfactory to the City, acting reasonably.

**ARTICLE 12  
NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION**

- 12.1 All insurance provided by Project Co, shall:
- (a) include Project Co, Project Co Parties, the City, City Parties, and any other party specified in Appendix A as Named Insureds to the extent specified in Appendix A or as required pursuant to any agreement relating to the Project to which Project Co is a party;
  - (b) include the City, City Parties, Project Co and any other party specified in Appendix A as Additional Insureds, or loss payees (as applicable) to the extent of their respective insurable interests to the extent specified in Appendix A or as required pursuant to any agreement relating to the Project to which Project Co is a party;
  - (c) except with respect to the Project Specific Professional Liability specified in Part 1 of Appendix A and Automobile Liability, Comprehensive Crime and WSIB specified in Parts 1 and 2 of Appendix A, contain a waiver of subrogation as against the City, City Parties, and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than design consultants) and agents;
  - (d) with respect to the “All Risk” Course of Construction Property, including Boiler and Machinery and “All Risk” Property, contain a waiver of subrogation as against Project Co, and its shareholders, officers, directors, officers, employees, servants, consultants (other than design consultants and agents);
  - (e) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
  - (f) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to the City and City Parties without any right of contribution of any insurance carried by the City and City Parties.

**ARTICLE 13  
CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES**

- 13.1 Prior to the execution of the Project Agreement, Project Co will provide the City with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 13.2 Prior to the execution of the Project Agreement, Project Co will provide the City with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to the City no later than 90 days after execution of the Project Agreement.
- 13.3 Prior to the commencement of any part of the Maintenance and Rehabilitation Services, Project Co will provide the City with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 2.1 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to the City no later than 90 days after the

Substantial Completion Date; however specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles, must be provided to the City no later than 90 days prior to the Substantial Completion Date.

- 13.4 Project Co may utilize blanket corporate policies to satisfy the Maintenance Period insurance requirements, provided that all the needs, scope of coverage and limits of the City have been met to their sole satisfaction having regard to the requirements of this Schedule 24.

**ARTICLE 14  
FAILURE TO MEET INSURANCE REQUIREMENTS**

- 14.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 24, fails to furnish to the City a certified copy of each policy required to be obtained by this Schedule 24 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then the City shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at the City's option, be payable by Project Co to the City on demand or be deducted by the City from the next payment or payments otherwise due to Project Co.
- 14.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by the City, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

**ARTICLE 15  
MODIFICATION OR CANCELLATION OF POLICIES**

- 15.1 Except as noted in Appendix A, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the addresses specified, to the City, City Parties, the Lenders and the Lenders' Agent. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- 15.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the addresses specified, to the City, City Parties, the Lenders and the Lenders' Agent.
- 15.3 With respect to Maintenance Period insurance, only notice of cancellation will be required for the Automobile Liability and Comprehensive Crime described in Part 2 of Appendix A.

- 15.4 With respect to insurance described in Section 1.1(a), (b) and (d), Section 1.2(d) and Section 2.1(a), (b) and (c), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to the City, City Parties, the Lenders or any other Named Insured or additional Insured, but only to the extent that such breach is not known to these parties.

**ARTICLE 16  
INSURERS**

- 16.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 24 shall be issued by financially sound insurers acceptable to the City and the Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 16.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than “A-” for three out of the previous five years but not lower than “B” at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A. M. Best Company (Best); or
  - (b) a Long-Term Financial Strength Rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (S&P); or
  - (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to the City and Lenders, acting reasonably, with respect to the insurances required by this Schedule 24.

**ARTICLE 17  
POLICY TERMS AND CONDITIONS**

- 17.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 24 shall be in form and substance satisfactory to the City and its insurance advisors, acting reasonably.
- 17.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

**ARTICLE 18  
FAILURE TO COMPLY**

- 18.1 Neither failure to comply with nor full compliance by Project Co with the insurance provisions of this Schedule 24 shall relieve Project Co of its liabilities and obligations under the Project Agreement.

**ARTICLE 19**  
**PERFORMANCE SECURITY REQUIREMENTS**

[REDACTED]

**ARTICLE 20**  
**INSURANCE TRUST AGREEMENT**

- 20.1 Prior to the transfer of ownership in respect of a Vehicle from the Revenue Vehicle Supplier to the City, all losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the “All Risks” Property Insurance carried by Project Co after Substantial Completion; and (iii) the Boiler & Machinery Insurance carried by Project Co after Substantial Completion, which in each case, relate to a Vehicle, shall, in each case, be payable solely to the Revenue Vehicle Supplier, and such losses shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.
- 20.2 After the transfer of ownership in respect of a Vehicle from the Revenue Vehicle Supplier to the City, all losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the “All Risks” Property Insurance carried by Project Co after Substantial Completion; and (iii) the Boiler & Machinery Insurance carried by Project Co after Substantial Completion, which, in each case, relate to a Revenue Vehicle or related equipment in respect of a Vehicle, shall be paid solely to the City and such losses shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

Appendix A – Insurance Requirements

Construction Period Insurance – Trillium Line Extension Project  
From execution of the Project Agreement until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the COCIP program

Type	Amount	Maximum Deductibles	Principal Cover
<p><b>“All Risks” Course of Construction Property, including Boiler and Machinery</b></p>	<p>Limit of liability of \$[REDACTED], including Property of every description including Revenue Vehicles and Vehicle Equipment supplied by the City for incorporation into the Project.</p> <p>For clarity, Project Co’s obligation to insure Revenue Vehicles and Vehicle Equipment commences once the Revenue Vehicle and Vehicle Equipment is delivered at New Walkley Yard or other location on Lands.</p> <p>Delay in Start-up \$[REDACTED], covering a 21 month indemnity period, including Contingent Delayed Start-Up related to losses at Suppliers’ premises or other temporary storage locations (\$[REDACTED] sub-limit)</p> <p>Soft Costs \$[REDACTED] (representing [REDACTED]% of Recurring / Continuing Soft Costs)</p> <p>Extra and Expediting Expense (minimum \$[REDACTED] sub-limit)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Replacement Cost Valuation (Property)</li> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>• Flood (to policy limit with annual aggregate)</li> <li>• Natural or man-made earth movement, including earthquake,</li> </ul>	<p>[REDACTED]% of loss value / \$[REDACTED] minimum; \$[REDACTED] maximum</p> <p>Earthquake</p> <p>\$[REDACTED] Flood and water damage</p> <p>\$[REDACTED] Testing and Commissioning</p> <p>\$[REDACTED] All other losses</p> <p>30 day waiting period applicable to time element coverages, except</p> <p>48 hour waiting period, off premises services</p>	<p>“All Risks” Course of Construction Property Insurance covering the insurable replacement cost of System Infrastructure, Revenue Vehicles and Vehicle Equipment based on the PML study, including cold and hot testing / commissioning of Equipment including HVAC, Delay in Start-Up, Soft Costs with no early occupancy restriction.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by the City, City Parties or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>landslide or subsidence (to policy limit with an annual aggregate)</li> <li>• Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>• Transit</li> <li>• Unnamed locations</li> <li>• By-laws including Demolition, Increased Cost of Repairs and Replacement (subject to a \$[REDACTED] sub-limit only with respect to existing or renovated buildings)</li> <li>• Debris Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Off Premises Services Interruption (minimum \$[REDACTED] sub-limit)</li> <li>• Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>• Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>• Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>• Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>• Green Building and LEED Upgrades (subject to a \$[REDACTED] sub-limit)</li> <li>• Defence Costs (subject to a \$[REDACTED] sub-limit)</li> <li>• Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Ammonia Contamination (minimum \$[REDACTED] sub-limit)</li> <li>• LEED Rectification, Commissioning and Testing Expenses (subject to a \$[REDACTED] sub-limit)</li> <li>• Civil Authority Access Interruption (8 weeks)</li> <li>• Prevention of Ingress/Egress (8 weeks)</li> <li>• Permission for Partial Use or Occupancy prior to Substantial Completion</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>• Cost of Carrying Project Financing (21 Months), included in Delayed Start-Up coverage</li> <li>• Margin of Profit Extension for Contractors</li> <li>• Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident)</li> <li>• Testing and Commissioning – no time limitation, subject to receipt of testing and commissioning schedule</li> </ul>		
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum LEG 2 standard</li> <li>• War risk</li> <li>• Terrorism</li> <li>• Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Contractors' Equipment (unless values declared and risk accepted by insurers – Contractors' Equipment Endorsement noted)</li> <li>• Sanctions Clause</li> <li>• Latent defect or inherent vice with respect to Revenue Vehicles</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
<i>Comments</i>			<ul style="list-style-type: none"> <li>• Named Insured includes Project Co, the City, City Parties, Lenders, Lender’s Agent, the Construction Contractor, Revenue Vehicle Supplier, all subcontractors, sub-subcontractors, consultants and sub-consultants, as their respective interests may appear</li> <li>• No provision permitted allowing a coinsurance penalty</li> <li>• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Additional key extensions of coverage:               <ul style="list-style-type: none"> <li>• Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the construction of the Project</li> <li>• Losses payable in accordance with the Insurance Trust Agreement and Section 20.1 and 20.2 of Schedule 24 – Insurance and Performance Security Requirements</li> <li>• Upon Substantial Completion, cover will cease and be replaced by All Risk Property and Boiler &amp; Machinery Insurance – Maintenance Period</li> <li>• Waiver of Subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, the City, City Parties, Revenue Vehicle Supplier, the project company appointed on the Trillium Line Extension project, the Construction Contractor, all subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders’ Agent, as well as officers, directors and employees, servants, and agents of the foregoing</li> <li>• Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded</li> <li>• Liberalization Clause</li> <li>• Errors and Omissions</li> <li>• Breach of Conditions</li> <li>• Interims Payments Clause</li> </ul> </li> </ul>
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 24 – Insurance and Performance Security Requirements		

**Construction Period Insurance – Trillium Line Extension Project**  
From execution of the Project Agreement until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the COCIP program

Type	Amount	Maximum Deductibles	Principal Cover
<p><b>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability</b></p>	<p>\$(REDACTED) each occurrence, and in the aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• \$(REDACTED) Non-Owned Automobile Liability</li> <li>• \$(REDACTED) Sudden and Accidental Pollution and Hostile Fire Pollution Liability</li> <li>• \$(REDACTED) “All Risks” Tenants’ Legal Liability</li> <li>• \$(REDACTED) Prairie or Forest Fire Fighting Expenses</li> <li>• \$(REDACTED) Employee Benefits Administrative Errors and Omissions</li> <li>• \$(REDACTED) Contractors Rework</li> <li>• \$(REDACTED) Legal Liability for Damages to Non-Owned Automobiles (SEF 94)</li> <li>• \$(REDACTED) Medical Payments</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Owner’s and Contractor’s Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunnelling / grading and similar operations associated with</li> </ul>	<p>\$(REDACTED) per occurrence</p> <p>\$(REDACTED) per claim with respect to Contractors Rework</p> <p>\$(REDACTED) per claim with respect to each of SEF 94, Tenants Legal Liability, Prairie or Forest Fire Fighting Expenses and Employee Benefits Administrative Errors and Omissions</p>	<p>Wrap-Up Commercial General Liability and Non-Owned Automobile Liability insurance covering construction operations in connection with System Infrastructure, Revenue Vehicles and Vehicle Equipment on an occurrence basis against claims for bodily injury (including death), personal injury, property damage (including Loss of Use), and including products and completed operations liability, extended for a period of not less than 24 months, effective from the Substantial Completion Date.</p> <p>Coverage shall be maintained continuously from the execution of the Project Agreement to the Substantial Completion Date, at which time the Products and Completed Operations extension will take effect.</p> <p>Pollution Liability – sudden and accidental and hostile fire pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours’ notice coverage structure).</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by the City, City Parties or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>• all construction works, as applicable</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co</li> <li>• Non-Owned Automobile Liability</li> <li>• Tenants’ Legal Liability (All Risks) – subject to sub-limit</li> <li>• Medical Expenses – subject to sub-limit</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Sudden and Accidental Pollution and Hostile Fire Pollution Liability – subject to sub-limit</li> <li>• Employee Benefits Administrative Errors and Omissions – subject to sub-limit</li> <li>• Contractors’ Rework Coverage – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Accident Benefits</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul>		
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>control of the insured, except during the Broad Form Products and Completed Operations extension period</li> <li>• Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the site</li> <li>• Physical damage to the Project, except during Broad Form Products and Completed Operations extension period</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Sanctions Clause</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
<i>Comments</i>			<ul style="list-style-type: none"> <li>• Named Insured includes Project Co and its affiliates, the City, City Parties, the Lenders, Lenders’ Agent, Project Co Parties involved in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, suppliers while working on the Lands, tradesmen while working on the Lands, engineers, architects, consultants and sub-consultants (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Lands</li> <li>• Directors, officers, shareholders, employees of the insured parties involved in the Works are covered as Additional Insureds</li> <li>• Insurance is primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>• Professional service activities integral to the Project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> <li>• Waiver of subrogation of insurers’ rights of recovery against all Named and/or Additional Insureds, including Project Co, the City, City Parties, the Construction Contractor, all subcontractors, sub-subcontractors, professional consultants, engineers and architects (other than for their professional liability), Lenders, Lenders’ Agent, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>
<i>Underwriters</i>			Principal underwriters in compliance with Article 16 of Schedule 24 – Insurance and Performance Security Requirements

**Construction Period Insurance – Trillium Line Extension Project**

From execution of the Project Agreement until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the COCIP program

Type	Amount	Maximum Deductibles	Principal Cover
<b>Project Specific Professional Liability</b>	<p>[\$REDACTED] minimum per claim / [\$REDACTED] in the aggregate (inclusive of defense and related costs and supplementary payments)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Primary Insurance extension</li> <li>• Automatic addition of firms</li> <li>• Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured</li> <li>• Any individuals or personal corporations retained by the Named Insured under a personal services contract</li> <li>• Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act</li> <li>• Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims</li> <li>• Duty to defend, even if the allegations are groundless, false or fraudulent</li> <li>• Worldwide territory, subject to suits brought in Canada</li> <li>• Mitigation of loss</li> <li>• Project Co endorsement</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Express warranties or guarantees</li> <li>• Estimates on profit, return</li> </ul>	<p>[\$REDACTED] per claim with respect to Mitigation losses</p> <p>[\$REDACTED] per claim, all other losses</p>	<p>Project Specific Professional Liability Insurance in connection with the System Infrastructure, Revenue Vehicles and Vehicle Equipment beginning of first design, through the entire construction period, to the Substantial Completion Date plus coverage for an extended reporting period of not less than 36 months.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by the City, City Parties or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>• Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents</li> <li>• Design or manufacture of any good or products sold or supplied by the Named Insured</li> <li>• Terrorism</li> <li>• Nuclear Liability</li> <li>• Judgments and awards deemed uninsurable by law</li> <li>• Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement</li> <li>• Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees</li> <li>• Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies</li> <li>• Sanctions Clause</li> </ul>		
<i>Comments</i>			<ul style="list-style-type: none"> <li>• Named Insured: Construction Contractor (as appropriate), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project</li> <li>• Professional services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier</li> <li>• Retroactive Date: Full retroactive coverage from date of first design activity</li> <li>• Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts or a material breach of any condition of the policy</li> </ul>
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 24 – Insurance and Performance Security Requirements		

**Construction Period Insurance – Trillium Line Extension Project**

From execution of the Project Agreement until the Substantial Completion Date

Insurances to be provided, or caused to be provided, by Project Co and arranged through the COCIP program

Type	Amount	Maximum Deductibles	Principal Cover
<b>Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability – Claims Made)</b>	\$[REDACTED] minimum per claim / \$[REDACTED] in the aggregate (inclusive of defense and related costs and supplementary payments)  Principal Extensions: <ul style="list-style-type: none"> <li>• Hazardous Substances occurring at or emanating from the System, the Public Infrastructure or the Lands during the Policy Period</li> <li>• Microbial Matter (including Fungus/Mould)</li> <li>• Underground / above ground storage tanks</li> <li>• First Party Restoration and Clean-up Costs</li> <li>• Disposal Site System, including Transportation (reporting required)</li> <li>• Duty to Defend</li> <li>• Canada and US Territory</li> <li>• Contractual Liability</li> <li>• Emergency Response Costs</li> </ul> Permitted Exclusions: <ul style="list-style-type: none"> <li>• Terrorism</li> <li>• War</li> <li>• Intentional Non-compliance</li> <li>• Prior Knowledge / Known Condition / Pre-Existing Condition (exception for exacerbation, aggravation, worsening)</li> <li>• WSIB</li> <li>• Employers’ Liability</li> <li>• Professional Liability</li> <li>• Nuclear Liability</li> <li>• Property Damage to Motor Vehicles during Transportation</li> </ul>	\$[REDACTED] per claim inclusive of defense and all costs and expenses	Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Lands and Off-Site, as required.  Extended Reporting Period: Minimum of 36 months after the Substantial Completion Date.  This coverage shall be primary with respect to System Infrastructure, Revenue Vehicles and Vehicle Equipment without right of contribution of any insurance carried by the City, City Parties or the Lenders.

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Type	Amount	Maximum Deductibles	Principal Cover
<i>Comments</i>		<ul style="list-style-type: none"><li>• Named Insured will include Project Co, its Affiliates, Project Co Parties and all other parties engaged in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants</li><li>• The City, City Parties, Lenders and Lenders' agent will be identified as Additional Insureds</li><li>• The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds</li></ul>	
<i>Underwriters</i>		Principal underwriters in compliance with Article 16 of Schedule 24 – Insurance and Performance Security Requirements	

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**Construction Period Insurance – Trillium Line Extension Project**

**From execution of the Project Agreement until the Substantial Completion Date**

**Insurances to be provided, or caused to be provided, by Project Co**

Type	Amount	Maximum Deductibles	Principal Cover
<b>Automobile Liability</b>	<p>[\$REDACTED] (Minimum) for Project Co and Project Co’s Construction Contractor vehicles</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, operated in connection with the Project.</p>
	<p>[\$REDACTED] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Lands</p>		<p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to the City, City Parties or the Lenders</p>
<b>Commercial General Liability and Non-Owned Automobile Liability</b>	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co’s Construction Contractor</p>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p>
	<p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent Employers Liability, Products and Completed Operations Liability, and Owner’s and Contractor’s Protective extensions</p>	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works</p>	<p>This Commercial General Liability Insurance will cover off-site activities connected to the project and Products and Completed Operations Liability beyond the “Wrap-Up” Commercial General Liability Insurance policy’s Products and Completed Operations extension period.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to the City, City Parties or the Lenders</p>
		<p>In both instances, limits of liability may be structured as any combination of Primary plus supplementary layers and Umbrella and/or Excess, or Primary plus Umbrella and/or Excess</p>	
	<p>Sub-limits (Project Co and Project Co’s Construction Contractor):</p> <ul style="list-style-type: none"> <li>• Full policy limits with respect to</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	<p>Non-Owned Automobile Liability</p> <ul style="list-style-type: none"> <li>• \$[REDACTED] Prairie or Forest Fire Fighting Expenses</li> </ul> <p>Principal Extensions (required to be provided by the Project Co and its Construction Contractor and shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works):</p> <ul style="list-style-type: none"> <li>• Owner’s and Contractor’s Protective</li> <li>• Blanket Contractual (written)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunnelling/grading and similar operations associated with the Works</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Non-Owned Automobile Liability</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles’ (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Worldwide Territory, subject to</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	<p>suits being brought in Canada or the US</p> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>• Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Lands</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>		
<i>Comments</i>	<ul style="list-style-type: none"> <li>• The City, City Parties, the Lenders and Lenders' Agent will be identified as Additional Insureds</li> </ul>		
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 24 – Insurance and Performance Security Requirements		

**Construction Period Insurance – Trillium Line Extension Project**

**From execution of the Project Agreement until the Substantial Completion Date**

**Insurances to be provided, or caused to be provided, by Project Co**

Type	Amount	Maximum Deductibles	Principal Cover
<b>Aircraft and Watercraft Liability</b>  (If any exposure)	Minimum \$[REDACTED] inclusive, including \$[REDACTED] passenger hazard – Owned Aircraft  Minimum \$[REDACTED] inclusive – Non-Owned Aircraft  Minimum \$[REDACTED] inclusive Owned or Non-Owned Watercraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to the City, City Parties, or the Lenders
<i>Comments</i>	<ul style="list-style-type: none"> <li>The City, City Parties, the Lenders and Lenders’ Agent will be identified as Additional Insureds</li> </ul>		
<b>“All Risks” Ocean Marine Cargo</b>  (if any exposure)	[REDACTED]% Replacement Cost Valuation basis	\$[REDACTED] per claim	Property of every description destined for incorporation into the System during marine transit, on a full replacement value basis, with no co-insurance provision.  This coverage shall be primary with respect to System Infrastructure without right of contribution of any insurance carried by the City, City Parties or the Lenders.
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured includes Project Co, the City, City Parties, Lenders, Lender’s Agent, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants as their respective interests may appear</li> </ul>		
<b>“All Risks” Contractors’ Equipment</b>  To cover Project Co, the Construction Contractor, subcontractors, sub-subcontractors consultants and sub-consultants	If Site equipment is three years old or less, the sum insured shall be equal to [REDACTED]% of the replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.  This requirement does not apply to equipment specifically insured under the “All Risks” Course of Construction Property, including Boiler and Machinery policy		All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment, used at the Lands.
<i>Comments</i>	<ul style="list-style-type: none"> <li>Waiver of Subrogation rights against Project Co, the City, City Parties, the Construction Contractor, all subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders’ Agent, as well as officers, directors, shareholders and employees of the foregoing</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
<b>Employee Dishonesty (Crime)</b>	\${REDACTED] per loss		<p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and its Affiliates including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Insurance primary without right of contribution of any other insurance carried by the City, City Parties or the Lenders.</p>
<i>Underwriters (All non-IOCIP insurance to be provided or caused to be provided by Project Co)</i>	Principal underwriters in compliance with Article 16 of Schedule 24 – Insurance and Performance Security Requirements		
<b>WSIB</b>	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Lands.</p> <p>Prior to commencement of the Project Operations, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to <b>the City</b> evidence of the workers compensation coverage maintained by any person involved in the Project Operations, or confirmation of that person's exemption from workers compensation coverage.</p>

## Maintenance Period Insurance – Trillium Line Extension Project

### From Substantial Completion Date until Termination Date

#### Insurance to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover
“All Risk” Property	As a minimum, a limit of liability of \$[REDACTED] for all Revenue Vehicles, Vehicle Equipment and New Walkley Yard  Principal Extensions: <ul style="list-style-type: none"> <li>• Replacement Cost Valuation (Property)</li> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>• Flood (to policy limit with annual aggregate)</li> <li>• Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>• Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>• Extra and Expediting Expenses (sub-limit)</li> <li>• Debris Removal (sub-limit)</li> <li>• Transit (sub-limit)</li> <li>• Unnamed locations (sub-limit)</li> <li>• Fire Fighting Expenses (sub-limit)</li> <li>• Contamination Clean-up or Removal (sub-limit)</li> <li>• By-Laws including demolition and increased replacement / repair costs (sub-limit)</li> <li>• Joint Loss Agreement (if separate “All Risk” Property and Boiler and Machinery policies are</li> </ul>	[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake  \$[REDACTED] Flood  \$[REDACTED] All other losses	“All Risks” Property Insurance covering the insurable replacement cost of all Revenue Vehicles, Vehicle Equipment and New Walkley Yard.  Coverage shall be maintained continuously from and after the Substantial Completion Date and at all times thereafter until the Termination Date.  Such insurance will include By-Laws and Off Premises coverage.  This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by the City, City Parties or the Lenders.

Type	Amount	Maximum Deductibles	Principal Cover
	<p>arranged)</p> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Faulty workmanship, materials construction, design or latent defects but resultant damage to be insured</li> <li>• War risk</li> <li>• Terrorism</li> <li>• Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Sanctions Clause</li> </ul>		
<i>Comments</i>			<ul style="list-style-type: none"> <li>• Named Insured will include the City, City Parties, Revenue Vehicle Supplier (if the transfer of ownership to the City of any Revenue Vehicle will occur after the Substantial Completion Date) and the Lenders</li> <li>• Losses payable in accordance with the Insurance Trust Agreement and Section 20.1 and 20.2 of Schedule 24 – Insurance and Performance Security Requirements.</li> <li>• No provision allowing a coinsurance penalty</li> <li>• Waiver of Subrogation against all Named Insureds, including but not limited to Project Co, the City, City Parties, Revenue Vehicle Supplier (if the transfer of ownership to the City of any Revenue Vehicle will occur after the Substantial Completion Date), the Lenders, Lenders’ Agent as well as officers, employees, servants and agents of the foregoing</li> </ul>
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 24 – Insurance and Performance Security Requirements		

**Maintenance Period Insurance –Trillium Line Extension Project**

**From Substantial Completion Date until Termination Date**

**Insurance to be provided, or caused to be provided, by Project Co**

Type	Amount	Maximum Deductibles	Principal Cover
<b>Boiler &amp; Machinery</b>	As a minimum, a limit of liability of \$[REDACTED] for all Revenue Vehicles, Vehicle Equipment and New Walkley Yard Sub-limits acceptable with respect to: <ul style="list-style-type: none"> <li>• Ammonia Contamination</li> <li>• Bylaws</li> <li>• Errors and Omissions</li> <li>• Expediting Expenses</li> <li>• Extra Expense</li> <li>• Hazardous Substances</li> <li>• Water Damage</li> </ul>	<p>• \$[REDACTED] per claim, Direct Damage</p> <p>• Business Interruption – Maximum 60 day Waiting Period</p>	<p>Boiler &amp; Machinery insurance on a Comprehensive Policy Form basis on a full replacement cost basis, including Expediting and Extra Expense coverage.</p> <p>Coverage shall be maintained continuously from and after the Substantial Completion Date or activation, whichever shall first occur, and at all times thereafter until the Termination Date.</p> <p>Boiler and Machinery Insurance may be arranged on a combined Property/Boiler and Machinery basis, subject to the Boiler and Machinery section of such a policy being arranged on a Comprehensive Form basis.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by the City, City Parties or the Lenders.</p>
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured will include Project Co, Project Co, the City, City Parties, Revenue Vehicle Supplier (if the transfer of ownership of any Revenue Vehicle to the City will occur after the Substantial Completion Date) and the Lenders</li> <li>• Losses payable in accordance with the Insurance Trust Agreement and Section 20.1 and 20.2 of Schedule 24 – Insurance and Performance Security Requirements.</li> </ul> <p>As nearly as possible, coverage will be structured to dovetail with the Property Insurance</p>		
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 24 – Insurance and Performance Security Requirements		

## Maintenance Period Insurance –Trillium Line Extension Project

From Substantial Completion Date until Termination Date

Insurance to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover
<b>Commercial General Liability and Non-Owned Automobile Liability</b>	<p>\$(REDACTED) each accident or occurrence and in the aggregate with respect to Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• Sudden and Accidental Pollution and Hostile Fire Pollution</li> <li>• “All Risks” Tenants’ Legal Liability, if any exposure exists</li> <li>• Prairie or Forest Fire Fighting Expense</li> <li>• Medical Payments</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance Owner’s and Contractor’s Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Contingent Employers Liability</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co</li> <li>• Non-Owned Automobile</li> <li>• Tenants’ Legal Liability (All</li> </ul>	<p>\$(REDACTED) per occurrence</p>	<p>Commercial General Liability insurance covering all Maintenance and Rehabilitation Services on an occurrence basis against claims for personal injury (including bodily injury and death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operation Liability insurance.</p> <p>Coverage shall be maintained continuously from and after the Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>Pollution Liability – Sudden and Accidental Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by the City, City Parties or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> <li>• Risks) – subject to sub-limit</li> <li>• Medical Expenses – subject to sub limit</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit</li> <li>• Permission for unlicensed vehicles’ partial road use</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Voluntary Compensation</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul>		
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>• Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Maintenance and Rehabilitation Services work site</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers,</li> </ul>		

Type	Amount	Maximum Deductibles	Principal Cover
	architects and other professional consultants <ul style="list-style-type: none"> <li>• Asbestos</li> <li>• Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Sanctions Clause</li> </ul>		
<i>Comments</i>			<ul style="list-style-type: none"> <li>• Named Insured includes Project Co and its affiliates, the City, City Parties, the Lenders, Project Co Parties involved in the Maintenance and Rehabilitation Services, including all contractors, subcontractors, sub-subcontractors, suppliers while working on the Lands, tradesmen while working on the Lands, engineers, architects, consultants and sub consultants, (other than for professional liability) and others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to Maintenance and Rehabilitation Services and the control and use of the Lands</li> <li>• Directors, officers, shareholders, employees of the insured parties involved in the Maintenance and Rehabilitation Services are covered as Additional Insureds</li> <li>• Insurance primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>• Professional service activities integral to the Maintenance and Rehabilitation Services, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> <li>• Waiver of subrogation of insurers' rights of recovery against all Named and/or Additional Insureds, including Project Co, the City, City Parties, the Construction Contractor, all subcontractors, sub-subcontractors, professional consultants, engineers and architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 24 – Insurance and Performance Security Requirements		

**Maintenance Period Insurance –Trillium Line Extension Project**

**From Substantial Completion Date until Termination Date**

**Insurance to be provided, or caused to be provided, by Project Co**

Type	Maximum Deductibles	Principal Cover
<b>Automobile Liability</b>	<p>[\$REDACTED] (Minimum) for Project Co and Project Co’s contractor vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Maintenance and Rehabilitation Services site or at the Operations Services site or the lands</p>	<p>Standard Ontario Owners Form For all vehicles operated by Project Co, all contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants operated in connection with the Maintenance and Rehabilitation Services.</p> <p>Coverage shall be maintained continuously from and after the Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to the City, City Parties or the Lenders.</p>
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of Schedule 24 – Insurance and Performance Security Requirements	

**Maintenance Period Insurance – Trillium Line Extension Project**

**From Substantial Completion Date until Termination Date**

**Insurance to be provided, or caused to be provided, by Project Co**

Type	Maximum Deductibles	Principal Cover
<p><b>WSIB</b></p> <p>In accordance with Ontario Act's established benefits and schedules</p>	<p>Not Applicable</p>	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at locations where the Maintenance and Rehabilitation Services are being performed.</p> <p>Prior to commencement of the Maintenance and Rehabilitation Services, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon completion of the Maintenance and Rehabilitation Services, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to the City evidence of the WSIB coverage maintained by any person involved in the Maintenance and Rehabilitation Services or confirmation of that person's exemption from WSIB coverage.</p>

## SCHEDULE 25

### RECORD PROVISIONS

#### 1. General Requirements

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 25, as follows:
- (a) in accordance with this Section 1;
  - (b) in accordance with the Project Agreement;
  - (c) in accordance with the requirements of Good Industry Practice;
  - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
  - (e) in accordance with the most stringent of Project Co's and the Construction Contractor's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in electronic format in accordance with the City's designated record keeping system;
  - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 35 of the Project Agreement; and
  - (j) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records on the Site in addition to retaining and maintaining records referred to in Section 2.1 in electronic format on the City's designated record keeping system.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the as-built drawings and the Record Drawings) required to be made or supplied pursuant to the Project Agreement on the most updated version of the applicable software and editable in updated base software format, and when printed, be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to the City, and shall conform to the Output Specifications, Good Industry Practice, and the CAD Standards. All drawings are to be submitted via the City's electronic control management system, with one hard copy provided to the City. Project Co shall make or supply drawings and other documents in such

- form as has been agreed by the Parties and shall include secure back up facilities. The City shall provide Project Co access to the City's electronic control management system.
- 1.5 Records shall be stored in electronic format within the City's electronic control management system where Project Co shall have access thereto and will continue to have access thereto, such that City will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 25 for a minimum period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall shall notify City if Project Co wishes to destroy any records referred to in this Schedule 25, or in respect of which the required period Section 1.6 or under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, City may elect to require Project Co to deliver such records to City, in which case Project Co shall, at the expense of City, deliver such records (with the exception of Sensitive Information) to City in the manner and to the location as City shall specify; or
  - (b) if City fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of a termination of this Project Agreement in accordance with its terms, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 25 to City in the manner and to the location that City shall reasonably specify. City shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co; or
  - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement.
- 1.9 Where the termination of the Project Agreement arises:
- (a) as a result of a City Event of Default or pursuant to Section 43.3 of the Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by City; or
  - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Final Completion Date or the Termination Date, as applicable (unless a longer period is required by Applicable Law), shall be borne by Project Co.
- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to City a report, as reasonably requested by City in connection with City's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against City or that may be owing by City to Project Co. The Parties acknowledge and agree that the contents

of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.

- 1.11 Not later than 120 days after the end of each fiscal year of the Project Term, a copy of Project Co's annual audited financial statements, in respect of that period, prepared in accordance with Applicable Law and GAAP, together with a certificate of the auditors of Project Co setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary or advisable and confirming that in their opinion such statements present fairly the financial position of Project Co and the results of its operations for the fiscal year reported on and have been defined in accordance with GAAP (as defined in the Lending Agreements), all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 50 of the Project Agreement, shall be treated by the City as Confidential Information of Project Co.

## **2. Records To Be Kept**

- 2.1 Without limiting any other requirement of the Project Agreement, and in addition to any other manuals, data, information and documents required to be maintained pursuant to Article 1.8 of Appendix A to Schedule 15-3 – Output Specifications: Maintenance and Rehabilitation Requirements, Project Co shall prepare, retain and maintain at its own expense:
- (a) the Project Agreement and the Project Documents, including all amendments to such agreements;
  - (b) all records relating to the appointment and replacement of the City Representative and the Project Co Representative;
  - (c) any documents, drawings (including, without limitation, the As-Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
  - (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
  - (e) all records relating to any statutory inspections of the Works or the Site, including any roadways;
  - (f) a complete record of construction, including:
    - (i) Construction Access Management Plan and all sub-plans;
    - (ii) Traffic Management Plans and all sub-plans;
    - (iii) all records generated by the Geotechnical Instrumentation and Monitoring Plan (as described in Schedule 15 – Output Specifications), including (but not limited to) baseline readings, routine monitoring records, and tunnel construction monitoring records;

- (iv) records of all pre-construction inspections and post-construction inspections (as described in Schedule 15 – Output Specifications), including a log identifying corrective actions;
  - (v) records of all geotechnical and environmental investigations performed by Project Co (as described in Schedule 15 – Output Specifications), including (but not limited to) records pertaining to the decommissioning of any monitoring wells and the location of any well casings;
  - (vi) Works progress photography;
  - (vii) construction notices or other communications with adjacent businesses, property owners or tenants;
  - (viii) planned and unplanned interruptions of Utility Infrastructure;
  - (ix) a complaints log including responses and any corrective action;
  - (x) any other items as requested by the City from time to time; and
  - (xi) piling inspection and testing results for structural construction.
- (g) any notices, reports, results and certificates relating to Substantial Completion and Final Completion and completion of the Project Co Commissioning;
- (h) all operation and maintenance manuals;
- (i) any documents relating to events of Force Majeure, Delay Events, Compensation Events, and Relief Events;
- (j) all documents submitted in accordance with Schedule 21 - Variation Procedure;
- (k) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (l) any documents related to a Project Co Change in Ownership or Change in Control;
- (m) any documents relating to any Refinancing;
- (n) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
- (i) Project Co's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
  - (iii) the withholdings of any payments by Project Co; or
  - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;

- (o) the financial accounts of Project Co referred to in Section 1.11 above;
  - (p) [not used];
  - (q) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Works;
  - (r) any documents relating to insurance and insurance claims;
  - (s) all Jointly Developed Materials; and
  - (t) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.

## SCHEDULE 26

### DISPUTE RESOLUTION PROCEDURE

#### 1. General

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of the Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under the Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of the Project Agreement, including this Schedule 26, or any matter referred to for resolution pursuant to this Schedule 26 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 26.
- 1.2 The Parties agree that at all times, both during and after the Project Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
  - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 10.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b), either Party may deliver to the City Representative or the Project Co Representative, as applicable, a written Notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 26 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 26, initiate the dispute resolution process described in Sections 2 to 10, as applicable, as more particularly described in this Schedule 26. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the City Representative, if given by the City, or by the Project Co Representative, if given by Project Co.

#### 2. Amicable Resolution by Party Representatives

- 2.1 On receipt of a Notice of Dispute, the City Representative and the Project Co Representative (collectively “**Party Representatives**” and individually “**Party Representative**”) shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

#### 3. Amicable Resolution by Senior Officers of each Party

- 3.1 If, following the process referred to in Section 2 (or as otherwise agreed to in writing by the Parties pursuant to Section 14.6), a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the

expiry of such period of time either Party Representative may, by Notice in writing to the other, refer the Dispute to an executive of a Party who:

- (a) is in a position of authority above that of the City Representative or the Project Co Representative, as the case may be; and
- (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.

3.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

#### **4. Independent Certifier**

4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 that cannot be resolved as provided in Sections 2 and 3 or as otherwise agreed to in writing by the Parties pursuant to Section 14.6.

4.2 All Disputes (other than Systems Integration Disputes which shall be resolved in accordance with Section 5 below) related to the Works and that:

- (a) arise prior to, or otherwise in relation to Substantial Completion;
- (b) relate to completion of Minor Deficiencies;
- (c) relate to whether any proposed work constitutes a Variation;
- (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 37 of the Project Agreement;
- (e) are referred to in the Project Agreement for determination by the Independent Certifier; or
- (f) relate to the Certification Services or any Certification Services Variations (as those terms are defined in the Independent Certifier Agreement);

shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be specified in the Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 4.2.

4.4 The Independent Certifier's decision to issue or not to issue a Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial

Completion Payment Commencement Date, and a Dispute in relation to the Substantial Completion Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 26. Save and except as aforesaid, the Independent Certifier's determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier's decisions shall be resolved pursuant to this Schedule 26, provided however that Sections 5, 6 and 7 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

**5. System Integration Verifier**

5.1 This Section 5 applies to all Systems Integration Disputes, if the Parties fail to resolve such Systems Integration Dispute through the process referred to in Sections 2 and 3 of this Schedule 26 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter), or as otherwise agreed to in writing by the Parties pursuant to Section 14.6 of this Schedule 26.

5.2 All Systems Integration Disputes shall initially be submitted to the Systems Integration Verifier for independent determination by the Systems Integration Verifier within 10 Business Days after submission to the Systems Integration Verifier, or such other period of time as may be agreed by the Parties, acting reasonably.

5.3 The Parties shall cooperate with the Systems Integration Verifier and provide such information, records and documents as may be required by the Systems Integration Verifier to make the determination within the period referred to in Section 5.2 of this Schedule 26.

5.4 Where it is determined by the Systems Integration Verifier that:

(a) corrective measures must be taken by Project Co to resolve a Systems Integration Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by the City unless (i) the Systems Integration Verifier determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a subsequent proceeding;

(b) corrective measures are not required to be taken by Project Co to resolve a Systems Integration Dispute, the City may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that the City undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 21 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to the City's right to contest the determination made by the Systems Integration Verifier in a subsequent proceeding. The City shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Project Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event if so determined by the Independent Certifier with input from the Systems Integration Verifier.

5.5 The Systems Integration Verifier's determinations are not binding on the Parties, and all Disputes in relation to the Systems Integration Verifier's determinations shall be resolved pursuant to this

Schedule 26, provided however that Section 7 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

**6. Expert Determination**

6.1 If, following the process referred to in Section 2 and 3 (or as otherwise agreed to in writing by the Parties pursuant to Section 14.6), any Dispute as to:

- (a) whether a Liquid Market exists;
- (b) whether amendments proposed by potentially Qualifying Tenders to the Project Agreement or other Project Documents are material;
- (c) the Adjusted Highest Qualifying Tender Price;
- (d) the determination of the Estimated Fair Value in accordance with Schedule 22 – Compensation on Termination of the Project Agreement, or
- (e) whether Project Co has achieved all necessary prerequisites, credits and points under the LEED Rating System in accordance with the specific requirements under the Project Agreement to achieve LEED Silver Rating,

has not been resolved within 10 Business Days after the date the Dispute was referred to the executives of the Parties for resolution by them, or within such longer period of time as the executives may expressly agree in writing in respect of a specific Dispute to allow them to continue their efforts to resolve the Dispute, then either Party may at any time thereafter, by written Notice signed by their Party Representative and delivered to the other Party Representative, require that the Dispute be resolved on an expedited basis by a qualified and experienced expert (the “**Expert**”).

6.2 The Expert shall be appointed as follows:

- (a) if the Parties agree on the Expert, the Parties shall jointly appoint the Expert as soon as possible and, in any event, within 5 Business Days after delivery of the Notice requiring that the Dispute be resolved by an Expert; and
- (b) if the Parties fail to agree or jointly appoint the Expert within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the Expert, in which case the court shall appoint the Expert at the earliest opportunity from the list of potential Experts submitted by the Parties or, if either or both Parties fail to submit their list of potential Experts within 7 Business Days, the court may appoint such person as the Expert who meets the requirements set out in this Schedule 26 for qualifications and experience of the Expert.

6.3 No one shall be nominated or appointed to act as an Expert who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of the City, Project Co, or any consultant, subconsultant or subcontractor of any of them.

- 6.4 Subject to the matters the Expert is authorized to determine pursuant to Section 6.1, the Expert will be appointed on a Dispute by Dispute basis, with each Expert having the qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed.
- 6.5 The Expert shall determine the appropriate process for timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:
- (a) solicit submissions and documents from both Parties, and impose deadlines for the receipt of such submissions;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) direct either or both Parties to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the Dispute and rendering of a decision;
  - (d) require either Party to supply or prepare for examination by the Expert and the other Party, any document or information the Expert considers necessary;
  - (e) inspect the Project Operations, giving reasonable Notice to each Party of the time when, and the place where, the Expert intends to conduct any inspections;
  - (f) convene meetings of the Parties to have the Parties discuss the issues in Dispute in the presence of the Expert; and
  - (g) take, or require either or both Parties to take and provide to the Expert, such measurements, perform such tests, audit such processes and procedures, and take any and all such other measures and steps as the Expert considers necessary to make a final determination in the Dispute.
- 6.6 The Expert shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 10 Business Days after the date of the appointment of the Expert, or such longer period of time as agreed to in writing by the Parties. The Expert shall give reasons or a summary of reasons for the Expert's decision.
- 6.7 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.
- 6.8 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. In addition, the costs of the Expert shall be borne equally by the Parties.
- 6.9 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 8, 9 and 10 by giving the required Notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Expert's determination shall be final and binding on both Parties and not subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Expert's determination. For greater certainty, the final determination by the Expert shall not be referred to an Adjudicator (as defined below) for determination under Section 7.

## 7. Adjudication

- 7.1 If, the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter), it is not a Dispute referred to in Sections 4.2 or 6.1, a Systems Integration Dispute, or a Dispute referred to arbitration or litigation pursuant to Sections 4.4 or 6.9 (except as otherwise agreed to in writing by the Parties pursuant to Section 14.6), either Party may, by written notice signed by their Party Representative and delivered to the other Party Representative, refer the Dispute to a single adjudicator selected in accordance with Section 7.2 (the “**Adjudicator**”).
- 7.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) and shall:
- (a) be independent of and at arm’s length to Project Co, the City and any other person having an interest in the Project Operations or any of the Project Documents;
  - (b) if the Dispute arises during the Project Term, be familiar with the construction, operation and management of rail transportation projects; and
  - (c) be a person who has the qualifications and experience with respect to the particular issues in Dispute.
- 7.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council’s *Model Adjudication Procedure: Fourth Edition* the terms of which are incorporated herein by reference, subject to the following modifications:
- (a) notwithstanding paragraph 14 of the *Model Adjudication Procedure*, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that the Project was designed and constructed in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including whether a hearing is necessary in order to resolve the Dispute;
  - (b) notwithstanding paragraphs 16 and 24 of the *Model Adjudication Procedure*, in any event, and subject to Section 7.4, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator’s decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event, Delay Event, Compensation Event and/or Excusing Cause. Unless otherwise provided for in this Schedule 26, the Adjudicator’s decision shall be binding on the Parties, but not final;
  - (c) notwithstanding paragraphs 29 and 30 of the *Model Adjudication Procedure*, the Adjudicator’s costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall

the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses;

- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act, 1991* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination;
- (e) notwithstanding paragraph 26 of the *Model Adjudication Procedure*, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in the Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under the Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue a Substantial Completion Certificate shall be final and binding solely in respect of determining the Substantial Completion Payment Commencement Date, and a Dispute in relation to the Substantial Completion Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 26;
- (f) the Adjudicator shall execute a non-disclosure agreement (the "**Non-Disclosure Agreement**") in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and
- (g) notwithstanding paragraph 34 of the *Model Adjudication Procedure*, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

7.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by the City unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding; and
- (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, the City may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that the City undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred;

provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 21 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to the City’s right to contest the determination made by the Adjudicator in a subsequent proceeding. The City shall provide Project Co such reasonable extensions of time in respect of Project Co’s obligations under this Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event or an Excusing Cause, as applicable, if so determined by the Adjudicator.

7.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 8, 9 and 10 by giving the required Notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator’s determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator’s determination.

## **8. Referral of Disputes to Arbitration or Litigation**

8.1 If:

- (a) the amount awarded by the Expert to a Party pursuant to Section 6 or by the Adjudicator pursuant to Section 7 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year;
- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party;
- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier’s decisions for which Section 4.4 provides that Sections 5, 6 and 7 shall not apply to resolve such Dispute; or
- (d) a Notice of Dispute has been issued for a Systems Integration Dispute in relation to the Systems Integration Verifier’s decisions for which Section 5.5 of this Schedule 26 provides that Section 7 of this Schedule 27 shall not apply to resolve such Dispute,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 10.1 or a consolidation of proceedings pursuant to Section 12, either Party may, by written Notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 9 upon the written consent of the other Party. Such Notice will not be effective unless it indicates it is a Notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert’s determination, the Adjudicator’s decision or the Notice of Dispute referred to in Section 8.1(c), as applicable, and provided further that such Notice expressly identifies the specific Dispute and determination of the Expert, decision of the Adjudicator or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

8.2 If a Party is entitled to refer a Dispute to which Sections 6 or 7 apply to arbitration or litigation pursuant to Sections 8.1 or 10.1 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Expert or the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Expert or the

Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, neither the Expert nor the Adjudicator shall be called as a witness by either party in any arbitration or litigation proceeding.

**9. Resolution by Arbitration**

9.1 Upon the mutual written consent of the Parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4, 5, 6 and 7 (to the extent required); and
- (b) all other requirements set out in this Schedule 26 have been satisfied,

such Dispute may be referred to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section.

9.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by Notice in writing delivered to the other Party within 5 Business Days after a Notice to arbitrate pursuant to Section 8.1 has been delivered, expressly requires that the Dispute that is the subject of that Notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.

9.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the Notice to arbitrate pursuant to Section 8; and
- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
  - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 26 are on the list; or
  - (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 26 are on the list of that other Party; or
  - (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 26 for the qualifications and experience of the arbitrator.

- 9.4 If the arbitration tribunal is comprised of three arbitrators:
- (a) the arbitrators shall be appointed as follows:
    - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the Notice to arbitrate pursuant to Section 8;
    - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the Notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 9.3(b);
    - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
    - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 9.3(b); and
  - (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.
- 9.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.
- 9.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of the City, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 9.7 The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) hold a hearing at which evidence and submissions are presented by the Parties;
  - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;

- (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
  - (f) inspect the Project Operations, giving reasonable Notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
  - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with the Project Agreement, including interim orders, interim and permanent injunctions, and specific performance; and
  - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 9.8 The place of arbitration shall be Ottawa, Ontario. The language of the arbitration shall be English.
- 9.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
  - (b) the Party who must pay the costs;
  - (c) the amount of the costs or how that amount is to be determined; and
  - (d) how all or part of the costs must be paid.
- 9.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 9.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 9.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the

decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.

- 9.13 The Project Agreement, including this Schedule 26, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 9.14 Any arbitrator appointed pursuant to this Section 9 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

## **10. Litigation**

10.1 Notwithstanding that a Notice to arbitrate has been delivered pursuant to Section 8.1, following receipt of the Expert's award or determination pursuant to Section 6, or of the Adjudicator's award or determination pursuant to Section 7, or if applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 provides that Sections 5 and 7 shall not apply, or if applicable a Notice of Dispute has been issued following receipt of a determination of the Systems Integration Verifier if the Dispute is a Systems Integration Dispute in relation to the Systems Integration Verifier's determination for which Section 5.5 of this Schedule 26 provides that Section 6 of this Schedule 26 shall not apply, if one or more of the following apply then either Party may elect, by written Notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:

- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
- (b) if the Dispute is considered by the City to involve material issues of public health or safety.

Such Notice will not be effective unless it indicates it is a Notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination, the Adjudicator's determination, or the Notice of Dispute referred to in Section 8.1(c) or (d), as applicable, and provided further that such Notice expressly identifies the specific Dispute and determination of the Adjudicator, Expert, Independent Certifier, or Systems Integration Verifier, as applicable, that is to be the subject of the litigation.

- 10.2 If neither Party delivers a Notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 10.1 of this Schedule 26, then:
- (a) provided that one Party has, in the manner and within the time period specified in Section 8.1, given Notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 12, that Dispute shall be resolved only by arbitration pursuant to Sections 9.2 to 9.14 of this Schedule 26; and

- (b) subject to Section 10.2(a), where a Dispute was determined by the Expert, the Expert's determination is final and binding on both Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.

## 11. Consolidation of Project Agreement Adjudication, Arbitration and Litigation

11.1 For all Disputes that arise prior to Substantial Completion, unless:

- (a) both Parties otherwise agree; or
- (b) the issue in a particular Dispute arises in connection with the Review Procedure; or
- (c) the issue in a particular Dispute is such that waiting until after Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties; or
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Substantial Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with Third Party Disputes (as hereinafter defined) pursuant to Section 12;

all adjudication, arbitral and litigation proceedings between the Parties prior to Substantial Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Substantial Completion.

## 12. Consolidation with Third Party Disputes

12.1 Subject to Section 12.4, if either Party is involved in an arbitration in the Province of Ontario with a third party ("**Third Party Arbitration**"), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues ("**Project Agreement Arbitration**") shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if the City, Project Co and the other parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.

12.2 Subject to Section 12.4, if either Party is involved in litigation in the Province of Ontario with a third party ("**Third Party Litigation**") and if:

- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
- (b) one of the Parties is brought directly into the Third Party Litigation as a party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay

of either or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

12.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.

12.4 Sections 12.1 and 12.2 only apply:

(a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party's liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and

(b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

**13. [Intentionally Deleted]**

**14. Miscellaneous**

14.1 Project Co and the City shall diligently carry out their respective obligations under the Project Agreement during the pendency of any Disputes, including adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Project Co's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), Project Co shall proceed in accordance with the direction of the City, and in the event the matter in dispute is determined in favour of Project Co, then, to the extent that such Dispute affects the System Infrastructure, proceeding in accordance with the City's position (i) prior to Substantial Completion shall, subject to and in accordance with Section 40 of the Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 41 of the Project Agreement, be treated as a Compensation Event, and (ii) following Substantial Completion shall, subject to and in accordance with Schedule 21 – Variation Procedure, result in a Variation. For greater certainty:

- (a) in respect of any Dispute relating to the Works referred to in Section 4.2, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding; and
  - (b) in respect of any Systems Integration Dispute, the Systems Integration Verifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of the Systems Integration Verifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.
- 14.2 Nothing contained in this Schedule 26 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction where available pursuant to Applicable Law, if necessary to prevent irreparable harm to a Party.
- 14.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 and on the amount of any award or judgment as follows:
  - (a) for amounts payable by Project Co to the City, Project Co shall indemnify the City as provided for at Section 54.1(e) of the Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under the Project Agreement to the City until the date of payment; or
  - (b) for amounts payable by the City to Project Co, the City shall indemnify Project Co as provided for at Section 54.2(c) of the Project Agreement from and against any damages suffered or incurred resulting from any overpayment to the City or, as applicable, any underpayment or non-payment by the City from the date of any overpayment to the City or, as applicable, from the date on which payment was due under the Project Agreement to Project Co until the date of payment.
- 14.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3, or by an expert, the Systems Integration Verifier, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to the City and the City Representative.
- 14.5 The City shall ensure that any and all documents and other information in the possession or control of any City Party that are available to the City and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3, or by an expert, the Systems Integration Verifier, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.
- 14.6 The Parties can, by written agreement, on a Dispute by Dispute basis:
  - (a) extend any or all timelines set out in this Schedule 26;

- (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4, 5, 6 and 7 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 8, 9 and 10;
- (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 7 and Section 9, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 7 and Section 10, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 9 and Section 10; and

agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 6.

## SCHEDULE 27

### REFINANCING

#### 1. DEFINITIONS

1.1 In this Schedule 27 – Refinancing, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 27 – Refinancing) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Exempt Refinancing**” means:
- (i) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
  - (ii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to Project Co under those agreements;
  - (iii) any Qualifying Bank Transaction;
  - (iv) any Rescue Refinancing;
  - (v) any Refinancing that was approved by the City prior to the execution of the Project Agreement and occurs during the first six months following the date of the Project Agreement;
  - (vi) any amendment, variation or supplement of any agreement approved by the City as part of any Variation under the Project Agreement;
  - (vii) any sale of Equity Capital or securitization of the existing rights or interests attaching to such Equity Capital, unless such sale or securitization involves increasing the Debt Amount or amending the Debt Makewhole on terms more favourable to Project Co than contained in the Lending Agreements; or
  - (viii) any Permitted Borrowing.
- (b) “**Qualifying Bank**” means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
  - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls, either directly or through its affiliates, funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person or a person whose standing or activities 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) **“Qualifying Bank Transaction”** means:
- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
  - (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
  - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (d) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (e) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
  - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
  - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
  - (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co’s ability to carry out any of the foregoing provisions of this definition.
- (f) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to the City, acting reasonably, prepared for the purpose of Section 2 of this Schedule 27, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 27, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
  - (ii) any changes in structure and funding since the date of the Project Agreement;
  - (iii) the performance of the Works to the date of the Refinancing;

- (iv) macroeconomic assumptions; and
  - (v) all other relevant factors.
- (g) “**Refinancing Gain**” means an amount equal to the greater of zero and (A - B), where:
- A = the sum of the Debt Amount as projected to be outstanding at East Substantial Completion, West Substantial Completion or Highway Substantial Completion, as applicable, immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing).
- B = the sum of the Debt Amount as projected to be outstanding at East Substantial Completion, West Substantial Completion or Highway Substantial Completion, as applicable, immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing).
- (h) “**Rescue Refinancing**” means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of the City, whether actual or potential.

## 2. REFINANCING

### 2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of the City, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered Notice of such Refinancing to the City before five Business Days of such Refinancing, except that such Notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing.

### 2.2 The City may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or the Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of the City, whether actual or contingent, present or future, known or unknown.

- 2.3 The City shall be entitled to receive:
- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
  - (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
  - (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.
- 2.4 Project Co shall promptly provide the City with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. The City shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within five Business Days after receiving a written request from the City, provide any information in relation to a proposed Refinancing as the City may reasonably require. Project Co shall keep the City informed as to any changes to the material terms of the Refinancing. Both the City and Project Co shall at all times act in good faith with respect to any Refinancing.
- 2.5 The City's share of the Refinancing Gain shall be received as a reduction in the amount of the Substantial Completion Payment.
- 2.6 The City and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain. If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of the City's share, the Dispute shall be determined in accordance with Schedule 26 - Dispute Resolution Procedure. Both the City and Project Co shall work collaboratively to establish the rate setting process required to complete the Refinancing.
- 2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days following any Qualifying Refinancing, Project Co will reimburse the City for all such reasonable out-of-pocket costs incurred by the City.

**SCHEDULE 28**

**INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of March, 2019

**BETWEEN:**

**CITY OF OTTAWA**

(the “**City**”)

**AND:**

**[REDACTED]**

(the “**Lenders’ Agent**”)

**AND:**

**TRANSITNEXT GENERAL PARTNERSHIP, [REDACTED]**

(“**Project Co**”)

**AND:**

**[REDACTED]**

(the “**Account Trustee**”)

**WHEREAS:**

- A. The City and Project Co have entered into the Project Agreement.
- B. The City, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. The City, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust 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**

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) “**Account Trustee**” means **[REDACTED]**.
- (b) “**Bank**” means **[REDACTED]**.

- (c) “**Business Day**” has the meaning given in the Project Agreement.
- (d) “**Change of Authorization Event**” has the meaning given in Section 7(a).
- (e) “**Change of Authorization Notice**” has the meaning given in Section 7(b)(ii).
- (f) “**City Step-In Notice**” means written notice given by the City to the Account Trustee that the City has delivered a Step-In Notice pursuant to Section 6 of the Maintenance and Rehabilitation Contractor’s Direct Agreement.
- (g) “**Crown**” has the meaning given in the Project Agreement.
- (h) “**Default Notice**” means a written notice given by the Lenders’ Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (i) “**Default Period**” means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (j) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (k) “**City Event of Default**” has the meaning given in the Project Agreement.
- (l) “**Insurance Policies**” has the meaning given in Section 4(a).
- (m) “**Insurance Proceeds**” has the meaning given in Section 4(b).
- (n) “**Insurance Trust Account**” means Account No. [REDACTED] at [REDACTED].
- (o) “**Insurance Trust Agreement**” means this insurance trust agreement.
- (p) “**LC Beneficiary**” has the meaning given in Section 4(f).
- (q) “**Lenders**” has the meaning given in the Project Agreement.
- (r) “**Lenders’ Agent**” means [REDACTED], acting as agent for and on behalf of the Lenders.
- (s) “**Lenders’ Direct Agreement**” means the lenders’ direct agreement made on or about the date hereof between the City, Project Co and the Lenders’ Agent.
- (t) “**Maintenance and Rehabilitation Contractor’s Direct Agreement**” has the meaning given in the Project Agreement.
- (u) “**Maintenance LC**” has the meaning given in the Project Agreement.
- (v) “**Order**” has the meaning given in Section 6(k).
- (w) “**Party**” means any of the City, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of the City, Project Co, the Lenders’ Agent and the Account Trustee.
- (x) “**Project**” has the meaning given in the Project Agreement.

- (y) “**Project Agreement**” means the project agreement made on or about March 28, 2019 between the City and Project Co.
- (z) “**Project Co**” means [REDACTED].
- (aa) “**Project Operations**” has the meaning given in the Project Agreement.
- (bb) “**System Infrastructure**” has the meaning given in the Project Agreement.
- (cc) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

## **2. INTERPRETATION**

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust 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 Insurance Trust 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, 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 Insurance Trust 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 Insurance Trust 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 Insurance Trust 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 Insurance Trust Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of this Insurance Trust 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 Insurance Trust 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 Insurance Trust 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 Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

### **3. INSURANCE TRUST ACCOUNT**

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the City.
- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, the City, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account, such funds shall be directed, used or advanced only for one of the following purposes:
  - (i) the repair, reinstatement, restoration, rehabilitation or replacement of the System Infrastructure or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid;

- (ii) the completion of the Project; or
- (iii) indemnification for any the City loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co under delay in start-up, soft costs or business interruption insurance shall be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Project Operations.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if the City is entitled to indemnification under the Insurance Policies in respect of any loss incurred by the City, such related insurance proceeds are to be paid directly to the City by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii). For greater certainty, it is understood and agreed that the City shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

#### **4. INSURANCE AND MAINTENANCE LC**

- (a) Project Co shall deliver, or cause to be delivered, to the Account Trustee certified copies or originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders’ Agent or the City (the “**Insurance Proceeds**”) as follows:
  - (i) subject to the last paragraph of Section 3(c), in the case of the all risks course of construction (builders’ risk), boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
    - (A) if the Account Trustee has not received a Default Notice and:
      - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
      - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$[REDACTED], to the Lenders’ Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
    - (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders’ Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as the City

may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and

- (ii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to the City, to be distributed to the parties entitled thereto.
- (c) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including any Insurance Proceeds held in the Insurance Trust Account:
  - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
  - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, the City, may at any time or from time to time direct in writing.
- (d) Upon Substantial Completion, Project Co shall deliver, or cause to be delivered, to the Account Trustee the original of the Maintenance LC, and the Account Trustee shall hold and release the Maintenance LC in accordance with Sections 4(e) through (i) trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (e) The Parties acknowledge that, pursuant to Section 4.2 of Schedule 4 – Funding Requirements, the required amount of the Maintenance LC may vary on an annual basis and, accordingly, Project Co may, from time to time, deliver, or caused to be delivered, to the Account Trustee replacement letters of credit or renewed letters of credit reflecting the required amount of the Maintenance LC at such time. The Account Trustee shall, concurrently with delivery to the Account Trustee of any replacement letter of credit or renewed letter of credit, release the original Maintenance LC then held by the Account Trustee to Project Co, and such replacement letter of credit or renewed letter of credit shall be deemed to be the Maintenance LC.
- (f) If the Account Trustee has not received a City Step-In Notice, the Maintenance LC shall be held in trust by the Account Trustee for the benefit of Project Co. If the Account Trustee has received a City Step-In Notice, the Maintenance LC shall be held in trust by the Account Trustee for the benefit of the City. The Party for whose benefit the Account Trustee is holding the Maintenance LC at the relevant time is hereinafter referred to as the "LC Beneficiary."
- (g) If the LC Beneficiary presents to the Account Trustee a declaration that it or any person it designates requires possession of the original Maintenance LC for the purposes of drawing on the same, the Account Trustee shall provide the original Maintenance LC to the LC Beneficiary or such designated party forthwith (and, in any event, within 2 Business Days following the presentation of such declaration by the LC Beneficiary) without the need for further investigation or inquiry by the Account Trustee. For certainty, the LC Beneficiary shall be entitled to retain the proceeds of any draw on the Maintenance LC.
- (h) The LC Beneficiary shall return the original Maintenance LC to the Account Trustee, for the Account Trustee to hold and release in accordance with Sections 4(e) through (i), within 5 Business Days of the LC Beneficiary drawing on the same.

- (i) Notwithstanding anything to the contrary in this Section 4, the Account Trustee shall release the Maintenance LC to Project Co in accordance with Section 4.4 of Schedule 4 – Funding Requirements.

**5. ACCOUNT AGREEMENT**

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to the City all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the City may from time to time request in writing.

**6. THE ACCOUNT TRUSTEE**

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, the City or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, the City or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in

respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
  - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
  - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, Lenders' Agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including negligence in the handling of funds), willful misconduct, bad faith or reckless disregard of any duty hereunder.

- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent or the City for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "Order"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, the City and Project Co.
- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, the City, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, the City, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, the City, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any

other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by the City shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the City.

- (o) Each of the Lenders' Agent and the City shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or the City, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or the City which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or the City, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or the City, as applicable, pursuant to Section 6(o).

## 7. LENDERS' AGENT AND CITY'S RIGHTS TO DIRECT

- (a) Until the termination of the Project Agreement in accordance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 – Compensation on Termination to the Project Agreement and all Insurance Proceeds to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by the City (a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
  - (i) the Lenders' Agent shall cease to be entitled, and the City shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
  - (ii) the Lenders' Agent and the City shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that the City shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where a City Event of Default has occurred. Where a City Event of Default has occurred, upon receipt by the Lenders' Agent and Lenders of all amounts owing by the City to the Lenders' Agent and Lenders under the Lenders' Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account,

the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

**8. TERMINATION**

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
  - (i) the obligations of Project Co to the Lenders’ Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
  - (ii) the obligations of Project Co to the City have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lenders’ Agent, the City, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory the Lenders’ Agent and the City.

**9. ASSIGNMENT**

- (a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders’ Agent, the City and Project Co.

**10. NOTICES**

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

If to the City: City of Ottawa  
110 Laurier Ave West  
Ottawa, Ontario K1P 1J1

Email: [REDACTED]  
Attn.: [REDACTED]

If to Project Co: TransitNEXT General Partnership  
[REDACTED]

Email: [REDACTED]  
Attn.: [REDACTED]

If to the Account Trustee: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Lenders' Agent: [REDACTED]

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

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(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.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.
- (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **11. AMENDMENTS**

- (a) This Insurance Trust 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 Insurance Trust Agreement.

**12. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust 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.

**13. RELATIONSHIP BETWEEN THE PARTIES**

- (a) The Parties are independent contractors. This Insurance Trust 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 Insurance Trust Agreement, of principal and Lenders' Agent.

**14. ENTIRE AGREEMENT**

- (a) Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust 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 Insurance Trust Agreement.

**15. SEVERABILITY**

- (a) Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust 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 Insurance Trust Agreement. If any such provision of this Insurance Trust 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 Insurance Trust Agreement as near as possible to its original intent and effect.

**16. ENUREMENT**

- (a) This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

**17. GOVERNING LAW AND JURISDICTION**

- (a) This Insurance Trust 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 Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

(c) [Intentionally Deleted].

**18. INTENTIONALLY DELETED**

**19. FURTHER ASSURANCE**

(a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Insurance Trust Agreement.

**20. LANGUAGE OF AGREEMENT**

(a) Each Party acknowledges having requested and being satisfied that this Insurance Trust 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.

**21. COUNTERPARTS**

(a) This Insurance Trust 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 Insurance Trust Agreement which was so faxed.

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

**CITY OF OTTAWA**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

**TRANSITNEXT GENERAL PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the partnership.

**[REDACTED]**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the trust company.

**[REDACTED]**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

I/We have authority to bind the corporation.

**SCHEDULE 29**

**PROJECT CO INFORMATION**

**[REDACTED]**

**SCHEDULE 30**

**[REDACTED]**

**SCHEDULE 31  
WORKS REPORT REQUIREMENTS**

**ARTICLE 1 CURRENT PBS UPDATE** Each month following Financial Close, within ten (10) Business Days following the prior month's end, Project Co shall submit a PBS Update, which shall include the following:

- (a) actual start and finish dates for completed Activities;
- (b) actual start dates, physical percent complete and remaining duration for Activities in progress;
- (c) projected sequences of Activities for future work;
- (d) revised relationships and durations for unfinished Activities, if warranted;
- (e) identify the Critical Path(s) in a Critical Path report;
- (f) show Near-Critical Path Activities;
- (g) a PBS Update table, which shall include the following:
  - (i) added and deleted activities;
  - (ii) changes to original durations;
  - (iii) changes to constraints;
  - (iv) changes to lags;
  - (v) changes to calendar assignments; and
  - (vi) logic changes.

All changes included in the PBS Update table shall include reasoning for the change.

- 1.2 The PBS Update shall use the Current PBS baseline. Re-baselining of a PBS Update shall not be permitted. Re-baselining shall be as permitted by Schedule 12 – Works Scheduling Requirements.
- 1.3 The Earned Value in a Period shall match the Construction Period Payment application.
- 1.4 The PBS Update shall use the Current PBS baseline. The PBS Update shall not be used to re-baseline the Schedule. All re-baselines shall be performed in accordance with Schedule 12 – Works Scheduling Requirements.
- 1.5 The PBS Update shall remain in compliance with Table 1 of Schedule 12 – Works Scheduling Requirements.

- 1.6 Project Co shall revise the Activities within the Current PBS as appropriate to identify the current sequence of works. If this revision causes impact on the Critical Path(s), or creates a new Critical Path(s), Project Co shall summarise the changes in the Monthly Progress Report.
- 1.7 Where Activities are divided due to changes in maximum duration, the parent activity dollar value shall be preserved across the new children.
- 1.8 The PBS Update shall at all times remain in compliance with the requirements of Schedule 12 – Works Scheduling Requirements.
- 1.9 The PBS Update shall be submitted in two electronic file formats. The first format shall be in the native file format of the software used to generate and manage the Works Schedules, which shall be the exported .XER file for the latest version of Primavera Professional Project Management (PPM). The second format shall be a word-searchable high resolution colour PDF version. Upon City's request, Project Co shall provide the details of the software and any additional software plug-ins used by Project Co, a copy of any templates, and the details for any software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable the City to replicate the Works Schedules submitted by Project Co using the native file formats provided by Project Co.

**ARTICLE 2 MONTHLY PROGRESS REPORT** The provisions of this Schedule 31 shall apply to the Monthly Progress Reports.

- 2.2 All information included in the Monthly Progress Reports related to Works Schedules shall be in accordance with the requirements of Schedule 12 – Works Scheduling Requirements.
- 2.3 Each month following Financial Close, Project Co shall submit to the City the Monthly Progress Report. Project Co shall submit the Monthly Progress Report within 10 Business Days following the prior month's end.
- 2.4 The Monthly Progress Report shall contain a narrative with the following items:
  - (a) an executive summary describing the general status of the Works;
  - (b) description of progress for the Project, including all phases of Works. Identify start date and completion dates on major areas of Works.
  - (c) For the requirements from 2.4(d) to 2.4(i), where there are no current actions or concerns, Project Co shall withhold the heading.
  - (d) Identification of tasks or activities which are causing delay, or may cause delay to, the works schedule. The Identification of tasks shall be grouped by:
    - (i) System Infrastructure, including where applicable;
      - (A) facilities;
      - (B) structures;
      - (C) systems;

- (D) tunnels;
- (E) guideway; and,
- (F) roadways.
- (ii) progress of design and review (until complete); and
- (iii) progress and issues for:
  - (A) communications and public engagement;
  - (B) traffic and transit management (including upcoming road closures);
  - (C) progress for Utility Work;
  - (D) demolitions and removals;
  - (E) safety, security, and emergency management;
  - (F) property access and business management plan updates;
  - (G) status update of all Permits, Licences, Approvals and Authorizations;
  - (H) environmental monitoring and compliance status;
  - (I) status of warranty work;
  - (J) operations training in accordance with Schedule 15 – Output Specifications; and
  - (K) all Commissioning;
- (e) contemplated innovations, where applicable;
- (f) outstanding contractual decisions;
- (g) description and associated metrics to demonstrate compliance on Project elements as appropriate;
- (h) summary quality assurance/quality control findings;
- (i) listing of any Variation Directive or Variation Confirmations that were identified or executed during the period from the submission of the previous month's Monthly Progress Report to the submission of the current Monthly Progress Report, including their status;
- (j) general summary of Works planned for the upcoming period;

- (k) identification of problems and issues that are causing delay or may cause delay to the works schedule, outstanding problems and issues, and summary of resolved problems and issues;
- (l) identification of requested and/or required City actions for the next month;
- (m) advance notice of requested and/or required City actions for the next six months;
- (n) selected digital progress photographs that summarizes key achievements of Project progress as outlined in the Monthly Progress Report narrative;
- (o) any other information specifically requested by the City on the progress of the applicable Works; and
- (p) a table of “Near-Critical Activities” for all Works Activities with a float of less than 10 Business Days.

2.5 The Monthly Progress Report shall also include, the following:

- (a) sustainability compliance status;
- (b) summarised quality assurance and quality control data, including:
  - (i) status until approval of each Integrated Management Plan, Traffic and Transit Management Plan. Once the relevant plan is reported as “Complete”, the plan can be removed from the following Monthly Progress Report; and,
  - (ii) status until approval of Design Certificates and Construction Certificates. Once the relevant certificate is reported as “Complete”, the certificate can be removed from the following monthly report.
- (c) IMS metrics, including:
  - (i) results of monthly Integrated Management System reports, IMS Audit reports and information from the Non-Conformance Tracking System (as described in Schedule 11 - Integrated Management System Requirements), status of Internal IMS Audits and External IMS Audits;
  - (ii) identified Non-Conformances and deficiencies in ongoing Works as identified by the City or Project Co or both; and,
  - (iii) threat and vulnerability actions (with summary).
- (d) health, Safety, and environmental metrics, including:
  - (i) lost time injuries;
  - (ii) restricted work cases;
  - (iii) medical treatment injuries;

- (iv) fatalities;
  - (v) near misses;
  - (vi) all reportable incidents; and,
  - (vii) accidents with no lost time.
- (e) community metrics, including:
- (i) received and resolved complaints;
  - (ii) community outreach events; and
  - (iii) community involvement.
- (f) management staffing changes, deletions, and additions for Project Co (if applicable);
- (g) status of Proceeding At Risk Matters (if applicable);
- (h) status of all Submittals pursuant to the requirements of the Project Agreement;
- (i) Subcontract status, including:
- (i) consultants;
  - (ii) Subcontracts awarded;
  - (iii) tenders;
  - (iv) small, minority-owned, women-owned, and disadvantaged business enterprises;
  - (v) apprenticeships;
  - (vi) labour report (average workforce); and,
  - (vii) contracts terminated and for what cause.
- (j) Project Co shall use the data to develop, and provide to the City in an acceptable format, the following tabulated data on a monthly basis from the Financial Close date until the latest Final Completion:
- (i) if applicable, the revised forecast cash flow in accordance with a Recovery Schedule;
  - (ii) the actual Earned Value (EV) as equal to the Activities at **[REDACTED]**% completion in the Current PBS;
  - (iii) the revised forecast cash flow to complete the Works in accordance with the Current PBS;

- (iv) the overall progress expressed as a percentage of the physical work completed; and
- (v) Project Co shall use the data to calculate the following performance indicators for inclusion in the Monthly Progress Report:
  - (A) Planned Value curve from PBS-1;
  - (B) Planned Value (PV) as calculated up to the Current PBS status date;
  - (C) Earned Value (EV) as calculated up to the Current PBS status date; and
  - (D) Schedule Performance Index (SPI) = Earned Value (EV)/ Planned Value (PV), expressed as a percentage.
- (k) risk management summary, that shall discuss any of the following that are current:
  - (i) updated risk register;
  - (ii) risk response plans requiring action from the City;
  - (iii) claims;
  - (iv) liens;
  - (v) environmental issues;
  - (vi) labour;
  - (vii) outstanding disputes;
  - (viii) safety and security;
  - (ix) operational risks;
  - (x) Stakeholder risks; and,
  - (xi) other risks.

2.6 The Monthly Progress Report shall include a Variance section, which shall include:

- (a) the information provided in Section 1.1(g) in a tabular format; and
- (b) a summarized narrative that provides justification for the changes.

**ARTICLE 3 MISCELLANEOUS**

- 3.1 Where the following deliverables are submitted separately to the Monthly Progress Report, Project Co shall submit following deliverables in accordance with the timing identified in Schedule 12:
- (a) Short Duration Schedule: Micro Works Schedule
  - (b) Short Duration Schedule: Testing and Commissioning Schedule
  - (c) Short Duration Schedule: Schedule to Complete
- 3.2 The Short Duration Schedules can be provided in either hard copy or .pdf, as agreed in discussions with the City.
- 3.3 Project Co shall prepare and submit a Testing and Commissioning schedule narrative.
- 3.4 This narrative shall be provided six months prior to commencement of Testing and Commissioning Activities, and updated following any detailed revision to the strategy.
- 3.5 Project Co shall prepare and submit a Testing and Commissioning schedule narrative to identify the strategy to achieve Substantial Completion and Final Completion.
- 3.6 The Testing and Commissioning schedule narrative shall be provided to the City six months prior to the first Testing and Commissioning activity.
- 3.7 The Testing and Commissioning schedule narrative shall contain:
- (a) Description of the testing philosophy and process;
  - (b) Description of the interrelationships and system interfaces with the:
    - (i) existing Confederation Line SI at Bayview Station and the head-end management platform at the TOCC and BCC
    - (ii) MacDonald-Cartier International Airport;
    - (iii) CNR and VIA Rail; and
    - (iv) NRC.
  - (c) Description of testing and commissioning sequencing to achieve Substantial Completion and Final Completion; and
  - (d) Identification of potential conflicts and challenges to achieve Substantial Completion and Final Completion.

**SCHEDULE 32**  
**CITY PERMITS, LICENCES, APPROVALS AND AUTHORIZATIONS (PLAA)**

- a) The Permits, Licences, Approvals and Authorizations may include, but are not limited to, those included in the tables below.
- b) The following Responsibility Tables will be updated by addendum, if applicable, upon receipt of further information.
- c) The following Responsibility Tables are for the purpose of the performance of the Works.
- d) If, for any permit, licence, approval or authorization listed in this Schedule 32, there is a legislative requirement for the applicant to be the City, then Project Co shall act as the City's agent and will be responsible for all aspects of the application preparation and submittal process at Project Co's own cost and expense. If required, the City will sign off on the application.
- e) All other Permits, Licences, Approvals and Authorizations not listed herein or otherwise noted, are the responsibility of Project Co.

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
Site Plan Control – Development Outside of the Public Transit System Right-of-Way	City of Ottawa	Not started. Necessary where required under specific circumstances such as infrastructure not part of the LRT infrastructure, e.g. parking lot redesign and over-build of stations. Consultation with the City will be required.	Project Co
Building and Demolition Permits – Stations and MSF	City of Ottawa	Not started.	Project Co
Noise By-law Exemption	City of Ottawa	Not started.	Project Co
Approval under Sewer Use By-law to discharge waste water	City of Ottawa	Not started.	Project Co
Road Cut Permit (utility circulation)	City of Ottawa	Not started.	Project Co
Temporary Road Closure Permit	City of Ottawa	Not started.	Project Co
Temporary Construction Easements	City of Ottawa	Not started.	Project Co
Street or Lane Closing/Opening	City of Ottawa	Not started.	Project Co
Zoning By-Law Amendment	City of Ottawa	Not started. Necessary where required under specific circumstances , e.g. station related development.	Project Co

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
		Consultation with the City will be required.	
Sign Permit	City of Ottawa	Not started.	Project Co
Permit under Ontario Heritage Act	City of Ottawa	Not started. May be necessary if heritage resources affected.	Project Co
Emergency Services Approval – Fire and Life Safety	City of Ottawa	Not started.	Project Co
Electrical Plan Review	Electrical Safety Authority	Not started.	Project Co
Construction Registration Permit	Electrical Safety Authority	Not started.	Project Co
Notice of Project as per <i>Occupational Health and Safety Act</i> (Ontario)	Ministry of Labour	Not started.	Project Co
Registration of Constructors and Employers Engaged in Construction	Ministry of Labour	Not started.	Project Co
Permit to Take Water	Ontario Ministry of the Environment and Climate Change	Not started.	Project Co
Environmental Compliance Approval (ECA)– SWM Facilities	Ontario Ministry of the Environment and	Not started.	Project Co

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
	Climate Change		
ECA – Water and Sanitary Sewer	Ontario Ministry of the Environment and Climate Change (In certain instances the City of Ottawa has delegated authority from MOECC for review)	Not started.	Project Co
ECA – Air and Noise	Ontario Ministry of the Environment and Climate Change	Not started.	Project Co
Environmental Activity and Sector Registry (EASR)	Ontario Ministry of the Environment and Climate Change	Not started.	Project Co
Approvals from MOECC under Ontario Environmental Assessment Act O. Reg. 231/08	Ontario Ministry of the Environment and Climate Change	An approval has been received from the MOECC Minister for the Trillium Line Extension Environmental Project Report.	City

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
<p>Amendments to the approvals of MOECC under Ontario Environmental Assessment Act O. Reg. 231/08</p>	<p>Ontario Ministry of the Environment and Climate Change</p>	<p>Addendums to the Environmental Project Report for the Bowesville Station Alternative Location, the proposed alignment extension to the Limebank Road extension, the revised Walkley Yard location and the grade separated Ellwood Diamond structure are under preparation by the City and will be provided to Project Co as part of the EA approvals when complete.</p>	<p>The City is responsible for addendums required for Bowesville Station Alternative Location, the proposed alignment extension to Limebank Road, the revised Walkley Yard location and the grade separated Ellwood Diamond structure. The City will provide approved addendums to Project Co by Financial Close.</p> <p>Project Co is responsible for any other addendums to the approved Environmental Project Reports that are required following Financial Close to the extent such addendums are required as a result of changes proposed by Project Co to the design contemplated in the Environmental Approvals, Project Co's construction of the Project, or any other action or inaction of Project Co.</p>
<p>Endangered Species Act Permits</p>	<p>Ontario Ministry of Natural Resources and Forestry</p>	<p>Under preparation by the City</p>	<p>In advance of Financial Close, the City will apply for the necessary permit(s) required under ESA or SARA. Post Financial Close, Project Co will be responsible for obtaining and maintaining the permit(s) as the City's agent. Any permit conditions that must occur after the latest Final Completion Date, such as long term monitoring, will be the responsibility of the City.</p> <p>Permits that have been received prior to financial close will be provided. Pending permit applications will also be provided with the understanding the proposed mitigation measures are conditional until</p>

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
			the permit is received.
Public Lands Act Work Permit	Ontario Ministry of Natural Resources and Forestry	City of Ottawa to initiate	Project Co to implement.
Archaeology – Letter confirming report complies with Ministry requirements and filed with Ontario Public Register of Archaeological Reports	Ontario Ministry of Tourism Culture and Sport	<p>Stage 1 Archaeological Assessment for the Trillium Line Extension completed and acceptance has been received from MTCS.</p> <p>Stage 1 Archaeological Assessment for Bowesville Station Alternative Location and Limebank extension alignment completed and submitted to MTCS for their acceptance.</p> <p>Stage 2 Archaeological Assessments for the Trillium Line Extension as well as the Cunningham’s Station and Cunningham-Murray sites have been completed by the City</p>	City is responsible to obtain the letter in respect of all those archaeological assessments completed by the City in advance of Financial Close. Project Co is responsible to obtain the letter in respect of all those archaeological assessments required after Financial Close.

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
		and submitted to MTCS for their acceptance.	
Approval for provincial funding	Ontario Ministry of Transportation	City is seeking provincial funding.	City
Approval from MTO for building and land use permit in accordance with the requirements of the Public Transportation and Highway Improvement Act	Ontario Ministry of Transportation	Not started.	Project Co
Approval pursuant to Section 35 of the Fisheries Act or Clearance that no approval is required	Fisheries and Oceans Canada	Not started.	Project Co
License to Collect Fish for Scientific Purpose	Ministry of Natural Resources and Forestry – Kemptville District	Not started.	Project Co
Land Access Permit	National Capital Commission	Not started. To be obtained by Project Co should access be required to NCC properties not included in the Lands	Project Co
Land Acquisition through Sub-Lease	Airport Authority	Contingent on City receiving NCC FLUDA	City  (Part of FLUDA approval coincident with the Airport Authority and NCC)

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
CEAA 2012 Section 67 CEAA determinations (approval) if additional lands required	NCC, Transport Canada, Airport Authority, PSPC, ECCC, DFO (if required), Agriculture and Agri-Food Canada, Canada Post, National Research Council, VIA Rail, Canadian Transportation Agency and Parks Canada	The City is currently preparing the environmental effects evaluation information to submit to federal authorities for determinations. That evaluation will include the construction of new Rideau River pedestrian bridge between Carleton University and Vincent Massey Park.	City will provide environmental effects evaluation information to the various governmental agencies to enable them to make required determinations under CEAA 2012 Section 67. Design and construction relevant environmental commitments part of these documents and federal determinations under section 67 of CEAA, 2012 to be implemented by Project Co.
<i>Navigation Protection Act</i> approval for in-water works in a navigation channel (Rideau River)	Transport Canada	Transport Canada has identified to the City that <i>Navigation Protection Act</i> approvals will be required for proposed repair works to the existing rail bridge as well as the construction of the new proposed pedestrian bridge on the Rideau River between Carleton University and Vincent Massey Park.	Project Co

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
Species at Risk Act Permits	Environment Canada and Climate Change	City has identified Species at Risk for which permitting under SARA will be required. The City will be initiating permits for requirements identified before Financial Close.	<p>Subject to the provisions of section 16.4 of the Project Agreement, the City will submit all approval documentation with Project Co as an agent for the implementation of the permit conditions related to design and construction activities. Copies of the permit applications will be provided to Project Co 10 Business Days after they are submitted to Environment Canada and Climate Change. Post Financial Close, Project Co will be responsible for obtaining and maintaining the Permits as the City’s agent. Any permit conditions that must occur after the Termination Date, such as long term monitoring, will be the responsibility of the City.</p> <p>Permits that have been received prior to financial close will be provided. Pending permit applications will also be provided with the understanding the proposed mitigation measures are conditional until the permit is received.</p>
Ontario <i>Invasive Species Act</i> obligations regarding propagation of restricted species	MOECC	Presence of Common Reed (Phragmites), Japanese knotweed and dog strangling vine has been noted within the Lands by the City during 2017 field surveys.	Project Co to complete restricted invasive species surveys before project is carried out and to incorporate mitigation measures into the Environmental Management Plan to ensure legal obligations are met.
Approval for federal funding	Infrastructure Canada	City is seeking provincial funding	City

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
Any and all Remaining Permits, Licences, Authorizations and Approvals	Various Agencies	Not started.	Project Co
NCC Approval in Principle	NCC	Issued September 14, 2017	City
NCC Concept Design Approval	NCC	~May 2018	City
NCC Property Transaction Approval	NCC	~May 2018	City
NCC Federal Land Use, Design and Transaction Approval or Airport Authority - NCC Airport Authority Framework Agreement Approval	NCC for FLUDA and Airport Authority for Framework Agreement	January 1 2019 – December 31 2021  Separated NCC FLUDAs will be sought by the City for the construction of the new Rideau River Pedestrian Bridge between Carleton University and Vincent Massey Park as well as the proposed changes to the Albion/Leitrim intersection	City
Approval pursuant to Ontario Regulation 170/06 – Development, Interference with Wetlands and Alterations to Shorelines and Watercourses (if required for Trillium Line)	Rideau Valley Conservation Authority	The City initiated discussions with RVCA regarding cut/fill compensation requirements for the construction of the new Rideau River pedestrian	Project Co

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
		Bridge between Carleton University and Vincent Massey Park. Discussions also occurred regarding permitting requirements for the construction of the Bowesville Station and Park and Ride. Discussions are also underway for the permitting requirements associated with potential Sawmill Creek tributary realignment at Walkley Yard.	
Rideau Canal In-Water and Shoreline Work Permit (for Trillium Line if required)	Parks Canada	If required for any of the works at the Dow's Lake tunnel.	Project Co
Approval to extend the Trillium Line from the Transport Minister under the Railway Safety Act (section 98)	Approval to the City of Ottawa from Transport Canada	Ongoing discussion Transport Canada	City  Notice of Railway Works required to be issued to adjacent property owners and filed with the Minister of Transport, via Transport Canada. If there is objection to the railway works by a property owner, dispute resolution would be enacted between City (owner of the railway) and property owner.
A risk assessment as per Section 15(1) of the Railway Safety Management System Regulations, 2015 and submission of a	Transport Canada	City reviewing requirements	City

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
Notice of Change in Operations document to Transport Canada.			
Reduced Clearance Envelope Exemption Request to the Transport Canada Standards Respecting Railway Clearances (May 14, 1992)	Capital Rail	Capital Railway Chief Engineer or designate needs to approve reduced clearance envelope prior to submittal to Transport Canada.	City
Railway Operating Certificate	Transport Canada	Modification of existing Operating Certificate needs to be submitted. Capital Railway on behalf of the City will be responsible for submitting request to Transport Canada for modification of the ROC.	City
Railway Safety Management System	Transport Canada	Modification of existing RSMS needs to be submitted.	City Capital Rail will submit information provided by Transport Canada.
Certificate of Fitness	Canadian Transportation Agency	Modification of existing Certificate of Fitness needs to be submitted	City. Capital Railway will submit request to the CTA for modifying Certificate of Fitness.

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
Licence of Occupation and Land Lease	Carleton University/City	MOU draft is under preparation between the City and Carleton University which will address requirements for the Licence of Occupation and Land Lease including traffic restrictions, power requirements, road re-instatement, construction schedule constraints, maintenance access, etc...	City
Rail Transfer Agreement – NRC Rail Access	NRC/City	Draft has been prepared by City and is under review by NRC	City
Airport Authority and LRT Airport Connection Construction Agreement	Airport Authority/City	MOU has been developed between the City and the Airport Authority to guide the development of the Agreement.	City
Airport Authority and LRT Airport Connection Operations Agreement	Airport Authority/City	MOU has been developed between the City and the Airport Authority to guide the development of the Agreement.	City

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
Maintenance Interface Agreement with RTG - Bayview	RTG/City	Discussions to be initiated by City with Rideau Transit Group to determine maintenance interface requirements between Confederation Line and Trillium Line at Bayview Station.	City
Updated VIA Rail Crossing Agreement	VIA Rail/City	Capital Rail is negotiating on behalf of the City. Agreement to cover responsibilities for the operation and maintenance of the Elwood Diamond has been drafted and is with VIA Rail for signature.	City
Updated Shared Use Agreement with CN (Walkley Interlocking)	CN/City	City to determine if an update to the agreement is required for the shared use of the Walkley diamond.	City

**Trillium LRT PLAA - Other Third Party Agreements**

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
Carleton University Parking Garage – Overbuild Air Rights Agreement	City	Drafting of agreement, including Term sheet and O&M, underway by City’s solicitor. Will be tied into the MOU containing the Licence of Occupation and Land Lease with Carleton.	City
Access Agreement for work under Hwy 417	MTO	Discussions currently ongoing with MTO	City
Existing Licences with CP transferred with sale to Trillium ROW to the City	Licences are part of City’s Trillium ROW land tenure	City reviewing responsibilities	City
Airport Zoning Regulations Exemption	Transport Canada the exemption and not the Airport Authority	Discussions ongoing with the City and Transport Canada	<p>City intends to obtain a 20 year renewable exemption from Transport Canada to the Ottawa Macdonald-Cartier Airport Zoning Regulations under the Aeronautics Act, to allow for a 3 m increase in height allowance for a Leitrim Road Grade Separation in the vicinity of the future Leitrim Road Runway (Runway 07R-25)</p> <p>City is also seeking confirmation that it enjoys legal non-conforming rights to operate within the existing freight envelope in the vicinity of the</p>

Permits, Licences and Approvals	Issuing Agency	Status	Responsibility of: City of Ottawa or Project Co.
			<p>future Golf Course Runway (07C-25C).</p> <p>Project Co will be responsible for obtaining any other exemptions to the Ottawa Macdonald-Cartier Airport Zoning Regulations required for the construction, or maintenance of the Trillium Line Extension.</p>
Central Experimental Farm/Dominion Arboretum Access	Agriculture and Agri-Foods Canada (AAFC)	Discussions ongoing between City and AAFC	City to obtain land access permit/agreement from AAFC. Project Co to implement all permit/agreement conditions.

**SCHEDULE 33  
LANDS**

**PART A – DEFINITIONS AND INTERPRETATION**

**1. DEFINITIONS**

**1.1** For the purposes of the Project Agreement, including but not limited to this Schedule 33, the following terms have the following meanings. Any capitalized term not defined in this Schedule 33 shall have the meaning given to such term in the Project Agreement.

(a) “**Additional Property Interest**” includes any additional parcel of land not forming part of the Lands, the expansion or alteration of any boundary of any parcel of land forming part of the Lands, the extension of any term of use of any parcel of forming part of the Lands beyond the term specified in the column marked “Duration” in the Lands Table, and the inclusion of additional Permitted Uses for any parcel of land forming part of the Lands, all as requested by Project Co in accordance with Section 8 of this Schedule 33 unless and until such parcel, extension, extended term or additional Permitted Use becomes part of the Lands and is included in the grant of the non-exclusive license described in Section 14.1 of the Project Agreement in accordance with Section 14.6 of the Project Agreement;

(b) “**City Road Allowance Lands**” means lands forming part of a municipal road having the status of a highway pursuant to Section 26 of the *Municipal Act, 2001* R.S.O. c.25. Within the Lands Table, property comprising City Road Allowance Lands are designated “**ROW**” in the column marked “Restrictions and Requirements”;

(c) “**Commencement Date**” means, with respect to each parcel of property forming part of the Lands, either:

- (i) the date identified in the column marked “Commencement Date” in the Lands Table; or,
- (ii) the first day of the month following the occurrence of the event described in the column marked “Commencement Date” in the Lands Table (for example, Financial Close); or,
- (iii) for lands designated City Road Allowance Lands (ROW), the date(s) specified in required permits, approvals or authorizations as described in Section 5 of this Schedule 33 and in Schedule 32 – Permits, Licenses, Approvals and Agreements;

and is the date upon which any parcel of land identified in the Lands Table becomes part of the Lands and is included in the non-exclusive licence granted by the City to Project Co in accordance with Section 14.1 of the Project Agreement;

(d) “**Confederation Line Lands**” means lands shown on Property Request Plans identified as “**Stage 1 PRPs**” and included in a folder titled “Stage 1 PRPs” located in the Data Room which are lands owned by the City, or lands in which the City has acquired an interest, and upon which assets and/or infrastructure comprising part of the Confederation Line are located and/or have been or will be designed, constructed, operated and/or maintained. Confederation Line Lands do not form part of the “Lands” except to the extent that they are also included in the Lands Table;

- (e) **“Construction Period Lands”** means property designated as “Construction Period” in the column marked "Construction Period or Project Term" in the Lands Table which property will only be included in the non-exclusive license, rights of use and access granted by the City to Project Co during the Construction Period, and which property is subject to any other limits on the term of the non-exclusive license and rights of use and access identified in this Schedule 33 and/or elsewhere in the Project Agreement;
- (f) **“Existing Corridor Lands Agreements”** means:
- (i) The Agreement of Purchase and Sale of Railway for Continued Railway Operations entered into by the City of Ottawa and Canadian Pacific Railway Company and St. Lawrence and Ottawa Railway Company dated March 21, 2005 a copy of which is located in file folder titled “Agreements” in the Data Room, and all of the agreements and Board Orders assigned to and assumed by the City pursuant to the said Agreement of Purchase and Sale and listed in Schedules “D” and “F” thereto;
  - (ii) The Agreement of Purchase and Sale entered into by the City of Ottawa and Canadian Pacific Railway Company and St. Lawrence and Ottawa Railway Company dated December 6, 2002 a copy of which is located in file folder titled “Agreements” in the Data Room and all of the agreements assigned to and assumed by the City pursuant to the said Agreement of Purchase and Sale and listed in Schedule “D” thereto;
  - (iii) The Elwood Interlocking and Diamond Operation and Maintenance Agreement between the City of Ottawa, operating as Capital Railway (**“Capital Railway”**) and VIA Rail Canada Inc. executed by the City a copy of which is located in file folder titled “Agreements” in the Data Room; and,
  - (iv) The Agreement between Canadian National Railway Company and St. Lawrence & Hudson Railway Company Limited (a wholly owned subsidiary of Canadian Pacific Railway Company) dated June 16<sup>th</sup>, 1999 as it relates to the control, operation and maintenance of the Walkley and Elwood Diamonds, a copy of which is located in file folder titled “Agreements” in the Data Room.
- (g) **“Lands”** means lands owned or to be acquired by the City or lands in respect of which the City has acquired or will acquire certain rights, all as set out in the Lands Table or otherwise deemed to be lands in accordance with this Schedule 33, and over which the City is granting to Project Co a non-exclusive license, right of use and access in accordance with Section 14.1 of the Project Agreement;
- (h) **“Lands Table”** means the table in Part B of this Schedule 33;
- (i) **“Permitted Use”** or **“Permitted Uses”** means the use(s) which may be put to each parcel forming part of the Lands as designated in the column marked “Permitted Use” in the Lands Table being one or more of the following:
- (i) **“New Municipal Infrastructure Lands”** means property forming part of the Lands and designated **“NMI”** in the column marked “Permitted Use” in the Lands Table representing the location where New Municipal Infrastructure is to be constructed or installed in accordance with Schedule 15- Output Specifications;

- (ii) **“System Infrastructure Lands”** means property forming part of the Lands and designated **“NSI”** in the column marked **“Permitted Use”** in the Lands Table representing the location where System Infrastructure is located or is to be constructed or installed in accordance with Schedule 15 – Output Specifications;
- (iii) **“Temporary Access Lands”** means property forming part of the Lands and designated **“TA”** in the column marked **“Permitted Use”** in the Lands Table which may be used temporarily for the sole purpose of providing non-exclusive pedestrian and/or vehicular access to other property forming part of the Lands;
- (iv) **“Temporary Mobilization Lands”** means property forming part of the Lands and designated **“TM”** in the column marked **“Permitted Use”** in the Lands Table which may be used as part of a mobilization site or staging area, being a designated area where personnel, equipment, supplies, site offices and other facilities required to undertake the Construction Activities are established and maintained in accordance with the provisions of Schedule 15 – Output Specifications relating to mobilization sites; and,
- (v) **“Temporary Construction Lands”** means property forming part of the Lands and designated **“TC”** in the column marked **“Permitted Use”** in the Lands Table which may be used temporarily in connection with the construction of System Infrastructure and New Municipal Infrastructure but which may not be used as part of a mobilization site or staging area other than for short term storage of mobile equipment and material required for construction in close proximity to the relevant parcel of Temporary Construction Lands;
- (j) **“Project Term Lands”** means property designated as **“Project Term”** in the column marked **“Construction Period or Project Term”** in the Lands Table which property will be included in the non-exclusive license, rights of use and access granted by the City to Project Co during the Project Term subject to limits on the term of the non-exclusive license and rights of use and access identified in this Schedule 33 and/or elsewhere in the Project Agreement;
- (k) **“Property Request Plan”** or **“PRP”** means a diagram defining the extent, limits and/or approximate boundaries of property; and,
- (l) **“Third Party Access Agreements”** means the agreements, including Standard Agreements, listed or described in Section 4.1 of this Schedule 33.

## 2. TERM

**2.1** The term of the non-exclusive license, rights of use and access to any parcel forming part of the Lands granted to Project Co by the City in accordance with Section 14.1 of the Project Agreement shall, irrespective of whether the parcel has been identified as constituting Construction Term Lands or Project Term Lands, run from the Commencement Date identified in the Lands Table for such parcel until the earlier of:

- (a) the end of the period calculated by adding to the Commencement Date the number of months specified for each parcel in the column marked **“Duration”** in the Lands Table; and,

(b) the Termination Date.

**2.2** Unless otherwise stated in the Lands Table, the number of months identified in the column marked “Duration” in the Lands Table, represents a single term comprised of consecutive months commencing on the Commencement Date.

**3. PERMITTED USES**

**3.1** Project Co’s use of any parcel forming part of the Lands shall be limited to the Permitted Use(s) designated in the column marked “Permitted Use” in the Lands Table.

**3.2** The installation or construction of New Municipal Infrastructure in or on any parcel of lands designated New Municipal Infrastructure Lands may be limited to the construction or installation of the type(s) of infrastructure specified in the “Restrictions and Requirements” column of the Lands Table and/or in the Third Party Access Agreement(s) applicable to such parcel.

**3.3** The installation of temporary excavation supports such as soldier piles, secant piles, rock dowels, rock bolts or tie backs any part of which will be left in place following completion of construction is only permitted in accordance with Section 3.4 within System Infrastructure Lands or within Temporary Construction Lands if such Temporary Construction Lands have been expressly identified as being available for temporary excavation support.

**3.4** Except as provided in this Section 3.4 or as expressly provided elsewhere in the Project Agreement, all Works shall take place exclusively within the boundaries of the Lands.

(i) Subject to the requirements of Section 5 of this Schedule 33 and Schedule 32 with respect to the use of City Road Allowance Lands, Project Co. may:

(A) construct or install New Municipal Infrastructure within City Road Allowance Lands; and/or,

(B) install temporary excavation supports such as soldier piles, secant piles, rock dowels, rock bolts or tie backs within City Road Allowance Lands;

(C) use or access City Road Allowance Lands for the purposes of providing Maintenance and Rehabilitation Services in accordance with Schedule 15-3; and/or,

(D) use City Road Allowance Lands for the purposes of managing traffic in accordance with a Traffic Management Plan,

irrespective of whether the City Road Allowance Lands required for the purposes listed above are described in the Lands Table or in the PRPs.

(ii) In addition to subsection 3.4(i)(B), which permits the installation of temporary excavation supports such as soldier piles, secant piles, rock dowels, rock bolts or tie backs within City Road Allowance Lands, such supports may also be installed in accordance with a licence acquired by Project Co. on its own behalf in accordance with Section 14.6(c) of the Project Agreement or by the City in accordance with Section 8 of this Schedule 33.

- (iii) The Lands Table and PRPs do not describe property required to accommodate Utility Works. Without limiting the provisions of the Project Agreement, including Section 8, Part 2, Schedule 15-2, which govern Utility Works, and subject to the requirements of Section 5 of this Schedule 33 and Schedule 32 with respect to the use of City Road Allowance Lands, Project Co. may undertake Utility Works within System Infrastructure Lands, City Road Allowance Lands or in accordance with the terms of an existing easement in favour of the relevant Utility Company.
- (iv) Utility Works will not be permitted on property other than City Road Allowance Lands, System Infrastructure Lands or within the boundaries of and in accordance with the terms of an existing easement in favour of the relevant Utility Company unless and until a new easement over such property in favour of the relevant Utility Company, and satisfactory to the relevant Utility Company, is acquired by Project Co. or by the City.
- (v) New easements for Utility Works contemplated in subsection 3.4(iv) above shall be acquired by Project Co. in accordance with Section 14.6(c) of the Project Agreement or by the City as Additional Property Interests in accordance with Section 8 of this Schedule 33, the costs of which acquisitions are to remain to Project Co's sole account not to be recovered through any Cash Allowance.
- (vi) Notwithstanding subsection 3.4(v) above, the following exceptions to the provisions of Section 8 of this Schedule 33 shall apply to requests for Additional Property Interests made by Project Co. with respect to new easements for Utility Company Self-Performed Work which are required solely as a result of Utility Agreements for Utility Company Self-Performed Work approved by the City in accordance with Section 20.13 of the Project Agreement:
  - (A) Section 8.1 (a) shall not apply and a request may be made at any time during the Project Term;
  - (B) Sections 8.1(c), 8.1(d), 8.1(e), 8.1(f) and 8.1(g) shall not apply with the exception that, within fifteen (15) Business Days of the delivery by Project Co. to the City of the materials described in Section 8.1(b), the City shall provide to Project Co. an approximate estimate of the time which the City anticipates will be required to secure the required easement;
  - (C) Sections 8.2(b), 8.2(c), 8.2 (e) and 8.2(f) shall not apply and the City shall use all reasonable efforts to complete the acquisition of the new easement with all due dispatch.

- 3.5 To the extent that Project Co undertakes, in accordance with subsections 3.4(i), 3.4(ii), 3.4(iii), and/or 3.4(iv) above, any Works, Utility Company Self-Performed Work or traffic management on lands comprising City Road Allowance Lands, or in accordance with the terms of a licence or easement acquired by Project Co. pursuant to Section 14.6(c) of the Project Agreement or existing easements in favour of relevant Utility Companies, which lands are not identified in the Lands Table and PRPs, all of Project Co.'s obligations and liabilities in respect of the Lands and Site under the Project Agreement shall apply with equal effect to all activities of Project Co and Project Co Parties on such lands.
- 3.6 The property identified as Parcel 43 on PRP 15f is an area which is used by federal agencies for the purposes of conducting ongoing research (the "**Porcine Cemetery**"). The Porcine Cemetery, which is not included in the Lands Table and does not form part of the Lands, shall not be used or accessed by Project Co. for any purpose whatsoever and Project Co. shall implement such measures as may be required from time to time to ensure that the Porcine Cemetery is not disturbed or impacted by the Project Operations in any way.

#### 4. RESTRICTIONS AND REQUIREMENTS

- 4.1 In addition to any other restriction or requirement contained in the Project Agreement, including this Schedule 33, Schedule 15 – Output Specifications and Schedule 16 – Encumbrances, Project Co's access to and use of the Lands for the purposes of the Project Operations is subject to the terms of the Third Party Access Agreements and other restrictions, qualifications and requirements contained in the Lands Table including as set out in the column marked "Restrictions and Requirements" including as described below:
- (a) "**Carleton University Terms**" designates property the use of which is subject to the terms and conditions of a Third Party Access Agreement, being the Memorandum of Agreement between the City and Carleton University, including all ancillary agreements incorporated as schedules to the Memorandum of Agreement, copies of which are located in file folder titled "Agreements" and located in the Data Room;
  - (b) "**CN Terms & Conditions**" designates property the use of which is subject to the terms and conditions of a Third Party Access Agreement dated June 16<sup>th</sup>, 1999 between the Canadian National Railway Company and the St. Lawrence & Hudson Railway Company Limited (a wholly owned subsidiary of the Canadian Pacific Railway Company) as it relates to the control, operation and maintenance of the Walkley Diamond, a copy of which is located in file folder titled "Agreements" in the Data Room, as may be amended by an agreement between the City and the Canadian National Railway Company;
  - (c) "**Corridor Lands Constraints**" designates property which, until the commencement of the Shut Down Period, will continue to be used as an active rail service line operated by Capital Railway. The use of lands designated Corridor Lands Constraints will be prohibited, until the commencement of the Shut Down Period, except to the extent that the City and Capital Railway determine in their sole and absolute discretion that a limited use, proposed by Project Co., of all or part of property designated Corridor Lands Constraints will not interrupt, impact, constrain or otherwise limit the operation of the active service line in any way. In addition to the foregoing, to the extent authorized by the City and Capital Railway, the use of property designated Corridor

Lands Constraints prior to the commencement of the Shut Down Period will be subject to any additional conditions, restrictions or constraints as may be imposed by Capital Railway or the City from time to time;

- (d) “**Confederation Line Lands Constraints**” designates property which includes, abuts or is in close proximity to Confederation Line Lands where coordination with the contractors responsible for constructing the first stage of the City’s Confederation Line light rail transit project may be required in accordance with the terms of the Project Agreement;
- (e) “**Dow’s Lake Terms**” designates property the use of which is subject to the terms and conditions of various Board Orders, licence agreements and easements relating to the construction, use and maintenance of the existing tunnel under Dow’s lake copies of which are located in file folder titled “Agreements” and located in the Data Room;
- (f) “**MNR Terms**” designates property, the use of which is subject to:
  - (i) the terms and conditions of permits issued by the Ontario Ministry of Natural Resources, including work permits, permits for works within a waterbody and permits for work on shorelands;
  - (ii) a Licence of Occupation on terms similar to Licence of Occupation No. 9561 issued to the Regional Municipal of Ottawa-Carleton for a transit way crossing and located in file folder titled “Agreements” and located in the Data Room; and,
  - (iii) Board Orders relating to the Rideau River Bridge structure, copies of which are located in file folder titled “Agreements” in the Data Room.
- (g) “**NCC Terms & Conditions**” designates property, the use of which is subject to the terms and conditions of Third Party Access Agreements between the City and the National Capital Commission, copies of which are located in file folder titled “Agreements” in the Data Room as well as the conditions of the Approvals in Principle issued by the National Capital Commission and any Federal Land Use Design and Transaction Approvals granted by the National Capital Commission with respect to the Project or any part thereof;
- (h) “**NRC Terms & Conditions**” designates property, the use of which is subject to the terms and conditions of a Rail Car Transfer Agreement between the City and the National Research Council of Canada, a copy of which is located in file folder titled “Agreements” in the Data Room, as well as the provisions of Schedule 15 – Output Specifications;
- (i) “**OMCIAA Terms**” designates property, the use of which is subject to the terms and conditions of a sublease entered into between the City of Ottawa and the Airport Authority, a copy of which is located in file folder titled “Agreements” in the Data Room;
- (j) “**PWGSC Terms**” designates property, the use of which is subject to the terms and conditions of the Third Party Access Agreement between the City and Her Majesty the Queen as represented by Public Works and Government Services Canada a copy of which is located in file folder titled “Agreements” in the Data Room;

- (k) “**South Keys Terms and Conditions**” designates property, the use of which is subject to the terms and conditions of the Third Party Access Agreement between the City, [REDACTED] and [REDACTED] a copy of which is located in file folder titled “Agreements” in the Data Room;
- (l) “**Stratified Parcel**” designates property having both horizontal and vertical boundaries;
- (m) “**Telecom License Parcel**” designates property subject to the terms and conditions of certain license agreements between Canadian Pacific Limited, as licensor, and various telecommunications providers, as licensees, with respect to the installation and maintenance of telecommunications cable and associated equipment within segments of the Lands, which license agreements are located in file folder titled “Agreements” in the Data Room, and includes the terms and conditions of any future telecommunications license granted by Canadian Pacific Limited in accordance with the terms of the “network right of way” reserved by Canadian Pacific Limited pursuant to items (i) and (ii) in the definition of Existing Corridor Lands Agreements;
- (n) “**Utility Coordination**” designates property which may also be required to support the construction, installation, use or maintenance of hydro-electric, gas or telecommunications infrastructure and, as a result, use of the parcel may require coordination with the utility provider. Refer to Schedule 15 – Output Specifications and utility plans contained in the Background Information;
- (o) “**VIA Terms and Conditions**” designates property the use of which is subject to the terms and conditions of the following Third Party Access Agreements:
  - (i) An agreement June 16<sup>th</sup>, 1999 between the Canadian National Railway Company and the St. Lawrence & Hudson Railway Company Limited (a wholly owned subsidiary of the Canadian Pacific Railway Company) as it relates to the control, operation and maintenance of the Elwood Diamond, as amended by the Elwood Interlocking and Diamond Operation and Maintenance Agreement copies of which are located in file folder titled “Agreements” in the Data Room; and,
  - (ii) An agreement on terms similar to the terms of the Agreement entered into on May 16, 2014 between the City and VIA Rail Canada Inc. with respect to the construction and long term maintenance and operation of a heavy and light rail grade separation crossing including but not limited to the VIA Right of Entry Authorization Form appended thereto, provided that in the event of any inconsistency between said agreement and the provisions of Schedule 15 relating to the construction and/or maintenance of a grade separated crossing of the Ellwood subdivision, the provisions of Schedule 15 shall prevail.

The forgoing does not constitute an exhaustive list of the restrictions and requirements which may be listed in the column designated “Restrictions and Requirements” in the Lands Table or which may apply to any property forming part of the Lands.

- 4.2** Segments of the Lands form part of existing rail corridors acquired by the City pursuant to the Existing Corridor Lands Agreements. These segments of the Lands are subject to the terms and conditions of various agreements, including railway crossing agreements, assigned to and assumed by the City at the time of the purchase of the railway corridors and described in the Existing Corridor Lands Agreements.

- 4.3 All of the agreements referred to in Sections 4.1 and 4.2 above, including any Crossing Agreements or Board Orders referenced in the Existing Corridor Lands Agreements which are included in the Data Room, together with all Standard Agreements, shall be treated, for the purposes of Section 15 of the Project Agreement and for the purpose of Schedule 16 - Encumbrances, as Encumbrances of which Project Co had knowledge prior to Financial Close. While the City has made efforts to incorporate significant construction, maintenance and other obligations flowing from the Third Party Access Agreements and the Existing Corridor Lands Agreements into the Project Agreement, Project Co. shall be deemed to have reviewed each of the Third Party Access Agreements and the Existing Corridor Lands Agreements, and any Crossing Agreements or Board Orders referenced in the Existing Corridor Lands Agreements which are included in the Data Room, and shall perform all obligations and observe and comply with all restrictions contained therein which are relevant to the use of any part of the Lands and/or the performance of the Project Operations.
- 4.4 Notwithstanding Section 4.3 above, to the extent that any of the agreements listed in Section 4.1 provide for the payment of a purchase price, license fee, rent, or other consideration in exchange for the transfer from a third party property owner to the City of property, an interest in property or a contractual right to use property forming part of the Lands, such purchase price, license fee, rent, or other consideration shall be paid by the City and not by Project Co, except to the extent that such purchase price, license fee, rent, or other consideration is paid with respect to an Additional Property Interest other than an Additional Property Interest acquired subject to the exception described in Section 3.4(vi) of this Schedule 33.

#### 4.5 STANDARD AGREEMENTS

- (a) For certain parts of the Lands, the City will enter into easement, license, or similar agreement(s) after Financial Close. The City intends to enter into such agreement(s) on substantively the same terms and conditions as an existing easement, license or similar agreement that has been entered into by the City and that is provided as Background Information prior to Financial Close or are currently contemplated in the “Restrictions and Requirements” column of Part B (the “**Standard Agreements**”), copies of which are included in the folder titled “Agreements” in the Data Room. If, after Financial Close,
- (i) the City enters into one or more easement, license or similar agreement(s) in respect of any part of the Lands; or
  - (ii) the City acquires any interest in or right to use any part of the Lands subject to any easement, license or similar agreement(s),

and such agreement(s) have substantively the same terms and conditions as the Standard Agreements, such agreement(s) shall be treated, for the purposes of Section 15 of the Project Agreement and for the purpose of Schedule 16 – Encumbrances, as though Project Co had knowledge of such agreements prior to Financial Close. This Section 4.5 shall not apply in circumstances where the City enters into an easement, license, or similar agreement after Financial Close on terms and conditions materially different from the Standard Agreement if such material differences cause a delay to Project Co in performing the Construction Activities, create additional material obligations or liabilities for Project Co, or cause a material increase in cost to Project Co, except to the extent that such easement, license or agreement relates to an Additional Property Interest, in which case the provisions of Section 8 of this Schedule 33 shall apply unless

the Additional Property Interest is acquired subject to the exception described in Section 3.4(vi) of this Schedule 33.

## **5. USE OF CITY ROAD ALLOWANCE LANDS**

The use of City Road Allowance Lands or any part thereof by Project Co, including but not limited to the term of such use and the date upon which Project Co may commence any Construction Activities on City Road Allowance Lands or any part thereof is subject to the terms of required permits and approvals, including Road Cut Permits and Temporary Construction-Related Encroachment Permits, to be obtained by Project Co in accordance with Schedule 32 – City Permits, Licenses, Approvals and Authorizations.

## **6. REPORT CARD PROCEDURE – TEMPORARY USE LANDS**

Without altering Project Co’s obligations to landscape, restore, remediate and/or reinstate the Lands or adjacent lands in accordance with the Project Agreement, including in accordance with Section 16.2 of the Project Agreement, Schedule 15 – Output Specifications and Schedule 17 – Environmental Obligations, for all parcels forming part of the Lands which are designated in the “Restrictions and Requirements” column of the Lands Table as a “**Report Card Parcel**”, Project Co shall comply with the protocol described in this Section 6.

### **6.1 Report Card**

Following the completion by Project Co of all Construction Activities on any Report Card Parcel, and at least thirty (30) days prior to the end of the term of use of such Report Card Parcel as specified in the Lands Table, Project Co shall submit to the City, as part of the Monthly Environmental Report required pursuant to Section 3.10(b) of Schedule 17 – Environmental Obligations, a summary report card in the form attached in Part C of this Schedule 33 together with the attachments set out therein for each Report Card Parcel (a “**Report Card**”).

### **6.2 City Review of Report Card**

Within Twenty Five (25) days of receipt of a Report Card, the City shall notify Project Co if the City has an objection to the information contained in, or the steps taken by Project Co as set out in the Report Card, or requires additional environmental investigations in accordance with Section 16. 2 of the Project Agreement and/or Schedule 17 – Environmental Obligations.

### **6.3 Remediation and Reinstatement During Term**

The remediation of any Contamination and/or the reinstatement of any property which Project Co is required to undertake in accordance with Section 16.2 of the Project Agreement, Schedule 15– Output Specifications and/or Schedule 17– Environmental Obligations shall be completed prior to the expiry of the term of use for such property as specified in the Lands Table failing which, in addition to any other obligations of Project Co contained in the Project Agreement, Project Co shall be responsible for indemnifying and/or reimbursing the City with respect to all costs, claims and/or damages incurred by the City as a result of any failure to return possession of the property to the owner of the property prior to the end of the term of use described in the Lands Table.

## 7. ENVIRONMENTAL INVESTIGATION REPORTS

Information regarding the environmental condition of parts of the Lands, including information about Contamination on, in, under or migrating from parts of the Lands, is contained in the Background Information. In some instances, additional site specific environmental investigation reports have been included in the Background Information, in which case the City has made efforts to provide references to the relevant Property Request Plans in Schedule 17 – Environmental Obligations; however, the inclusion of Property Request Plan references in Schedule 17 – Environmental Obligations shall in no way limit Project Co’s obligations pursuant to Section 16.2 of the Project Agreement.

## 8. ADDITIONAL PROPERTY INTERESTS

### 8.1 Requests for Additional Property Interests

The following provisions shall be in addition to Section 14.6 of the Project Agreement governing requests for Additional Property Interests by Project Co.

- (a) The City will only consider requests for Additional Property Interests:
  - (i) During the sixty (60) day period commencing nine (9) months following Financial Close (the “**First Additional Property Interests Request Period**”); and,
  - (ii) During the sixty (60) day period commencing eighteen (18) months following Financial Close (the “**Final Additional Property Interests Request Period**”).
- (b) Every request for Additional Property Interests submitted by Project Co shall:
  - (i) include a Property Request Plan prepared by Project Co at Project Co’s cost describing the Additional Property Interest, including stratification if appropriate;
  - (ii) state the proposed Commencement Date and duration for the Additional Property Interest;
  - (iii) detail Project Co’s reasons for requesting the Additional Property Interest and provide a drawing or sketch describing the horizontal and vertical dimensions of any New Municipal Infrastructure, System Infrastructure, New Utility Company Infrastructure and/or other infrastructure to be installed and/or constructed by Project Co within the boundaries of the Additional Property Interest; and
  - (iv) indicate all reasonably foreseeable implications of acquiring the Additional Property Interest, including whether the acquisition of the Additional Property Interest is expected to result in cost savings for the City from a design, engineering or construction perspective.
- (c) Project Co shall pay to the City, in respect of any request for an Additional Property Interest, an administration fee calculated as follows:
  - (i) For each Additional Property Interest requested during the First Additional Property Interests Request Period, a fee of [REDACTED] Dollars, (\$[REDACTED]); and,

- (ii) For each Additional Property Interest requested during the Final Additional Property Interests Request Period, a fee of [REDACTED] Dollars, (\$[REDACTED]).
- (d) As soon as practicable and in any event within 15 Business Days after receipt of a request for Additional Property Interests, the City shall decide whether or not it is prepared to consider the request and shall either advise Project Co that it has elected not to consider the request or shall deliver to Project Co an approximate estimate of:
  - (i) the time which the City anticipates will be required to secure the Additional Property Interest; and,
  - (ii) the anticipated cost of acquiring the Additional Property Interest

The foregoing approximate estimates shall be in no way binding upon the City and shall not limit Project Co's obligations in Section 8.2(c).

- (e) Project Co acknowledges and agrees that any decision of the City pursuant to Section 8.1(d) above shall be final and binding on the Parties and in the event that the City elects not to consider the acquisition of any Additional Property Interest, Project Co acknowledges and agrees that the City's decision shall not be subject to resolution pursuant to Schedule 27 – Dispute Resolution Procedure.
- (f) If the City, in its sole discretion, elects to consider a request for an Additional Property Interest, the City shall be entitled to retain the administration fee payable in respect of such request for such Additional Property Interest in accordance with Section 8.1(c) above. Such fees are in addition to the costs payable by Project Co in accordance with Section 8.2(c) below and the City shall have no obligation to refund any part of such administrative fee whether or not the request for Additional Property Interests is withdrawn by Project Co as contemplated in 8.1(g)(i) below or whether or not the Additional Property Interest is acquired or accepted as part of the Lands for any reason whatsoever.
- (g) As soon as practicable, and in any event within 15 Business Days after the later of the date the estimate described in Section 8.1(d) above was delivered, Project Co shall either:
  - (i) withdraw its request for the Additional Property Interest by written notice to the City; or
  - (ii) issue a written confirmation directing the City to proceed with the acquisition of the Additional Property Interest.

If Project Co does not issue the confirmation described in Section 8.1(g) within such 15 Business Days, then, the request for Additional Property Interests shall be deemed to have been withdrawn. If Project Co does issue the confirmation described in Section 8.1(g) within such 15 Business Days, the City shall, subject to the provisions of Section 8.2 below, proceed with the acquisition of the Additional Property Interest.

## **8.2 Acquisition of Additional Property Interests**

- (a) Notwithstanding anything to the contrary in the Project Agreement, the City's failure to acquire any Additional Property Interest, or its failure to acquire any Additional Property Interest on or

- prior to the Commencement Date proposed by Project Co, shall not constitute a Delay Event, a Compensation Event, a Relief Event or a City Event of Default under the Project Agreement.
- (b) The City shall be entitled to abandon the acquisition of any Additional Property Interest at any time, for any reason and in its sole and absolute discretion, in which case the Additional Property Interest will not form part of the Lands and will not be included in the license to be granted to Project Co in accordance with Section 14.1 of the Project Agreement.
  - (c) Project Co shall be responsible for all costs and expenses incurred by the City in connection with the acquisition of any Additional Property Interest, irrespective of whether the acquisition of the Additional Property Interest is completed and irrespective of whether the Additional Property Interest is acquired by negotiation or expropriation, including but not limited to all consideration paid to the owner, legal costs, including legal costs incurred by the City and third party legal costs, land surveying and appraisal costs, including third party land surveying and appraisal costs, administrative costs, the market value of the Additional Property Interest, disturbance damages, injurious affection and any and all compensation payable under the *Expropriations Act*, R.S.O. 1990, c. E. 26, if applicable, and the City shall be entitled, in accordance with Section 32.12 of the Project Agreement, to set off any such costs and expenses against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement.
  - (d) Notwithstanding any provision of the Project Agreement to the contrary, including but not limited to Section 16.2, 16.3 and 16.4 of the Project Agreement, Project Co shall be responsible for any Contamination on, in or under, or migrating to or from any new parcel of land or any addition to any parcel forming part of the Lands acquired by the City as an Additional Property Interest and for any Species-at-Risk, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites which may be found on or at any new parcel of land or any addition to any parcel forming part of the Lands acquired by the City as an Additional Property Interest. Project Co may request the opportunity to undertake additional investigations with respect any Additional Property Interest and, if such additional investigations are undertaken, Project Co shall provide the results of such investigations to the City before the City completes the acquisition of the Additional Property Interest. In the event that the City is unable to obtain the consent of the relevant property owner with respect to any additional investigation requested by Project Co pursuant to this Section 8.2(d), the City shall notify Project Co that it is unable to obtain the required consent, in which case Project Co may, subject to its obligations in Section 8.2(c), direct the City to abandon the acquisition of the relevant Additional Property Interest. Subject to this Section 8.2(d), the City shall have no obligation to conduct any investigation in connection with the acquisition of an Additional Property Interest.
  - (e) The terms of any agreement, or amendment to an existing agreement, negotiated by the City with respect to the acquisition of any Additional Property Interest shall be treated, for the purposes of Section 15 of the Project Agreement and for the purpose of Schedule 16 – Encumbrances, as Encumbrances of which Project Co had knowledge prior to Financial Close provided, however, that if such an agreement or amendment is not a Standard Agreement, the City shall provide a copy of any such agreement or amendment to Project Co prior to concluding the agreement or amending agreement. Within ten (10) business days of delivery by the City of a copy of any agreement or amendment to Project Co, Project Co may, subject to its obligations in Section 8.2(c), direct the City to abandon the acquisition of the relevant Additional Property Interest, failing which Project Co shall be deemed to have accepted the terms of the agreement or amending agreement.

- (f) Project Co may, from time to time request and the City shall provide an accounting of the costs incurred in respect of any acquisition of any Additional Property Interest by the City.

## **9. PROPERTY REQUEST PLANS**

### **9.1 Conflict**

In the event of any conflict between information contained on the face of a Property Request Plan and the Lands Table, the provisions contained in the Lands Table shall prevail.

### **9.2 Building Overlays**

Building overlays included in Property Request Plans suggest the approximate extent of existing building envelopes only. Unless otherwise expressly provided in the Lands Table or in Schedule 15 – Output Specifications, notwithstanding the location of any building overlay, the grant of the non-exclusive license, rights of use and access to any parcel forming part of the Lands extends only to within one hundred and fifty millimetres (150mm) from any existing building or structure. The City makes no representation as to the accuracy or completeness of building overlays included in Property Request Plans.

**PART B –LANDS TABLE**

[REDACTED]

**PART C –FORM OF REPORT CARD**

**Report Card**

Property Description:  
PRP Reference:  
Commencement Date:  
Expected date of completion of Construction Activities and/or Works:

Description of Use which Project Co. has put to the Report Card Parcel (include particulars):	
Description of Any Physical Alteration to Report Card Parcel:	
Summary of Baseline Conditions (including reference to relevant Background Information):	
Summary of Spill Reports (append reports):	
Volume of soil imported (append lab reports):	
Description of any soil or groundwater sampling (include results)	
Follow up Environmental Investigation Recommended (include detail):	

Every Report Card shall include the following attachments:

- (1) Property Request Plan(s) (including with relevant site plans describing Report Card Parcel).
- (2) Lab reports with respect to imported soils (if any).
- (3) Spill reports (if any).
- (4) Copies of relevant Background Information or other environmental investigation reports.
- (5) Soil and Groundwater Sampling Reports (if any).
- (6) A summary of all reinstatement, restoration and/or rehabilitation works undertaken in accordance with Parts 1 and 6 of Schedule 15-2 or otherwise is required for all Report Card Parcels:

- i. Designated Temporary Mobilization Lands (TM); and/or
- ii. Where a significant grade change has occurred as a result of Construction Activities

**SCHEDULE 34**

**[Intentionally Deleted]**

## SCHEDULE 35

### INTELLECTUAL PROPERTY

#### 1. INTERPRETATION

**1.1 Definitions:** In this Schedule 35, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 35 – Intellectual Property) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Assigned Intellectual Property**” has the meaning given in Section 2.5(a).
- (b) “**Assignee**” has the meaning given in Section 2.5(a).
- (c) “**Assignor**” has the meaning given in Section 2.5(a).
- (d) “**City Intellectual Property**” means:
  - (i) Intellectual Property that is Owned, created, developed or acquired by City or any City Personnel:
    - (A) prior to the Project Term; or
    - (B) during the Project Term but outside the Project Scope; or
    - (C) during the Project Term and within the Project Scope, but which is not Project Co Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property;
  - (ii) the Developed Intellectual Property, excluding any Developed Intellectual Property that is specified in a Variation or by separate agreement of City and Project Co to be Owned by Project Co;
  - (iii) any other Project Data that is specified in a Variation or by separate agreement of City and Project Co to be Owned by City; and
  - (iv) subject to Section 49.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, City or any Subcontractor alone, jointly with each other or with any other person;

and which is used by City, or required to be used by Project Co or a Subcontractor, in the performance of their respective obligations in respect of the Project or under the Project Agreement.

- (e) “**City Personnel**” means persons acting on behalf of City or employed, engaged or retained by City in connection with the performance of City’s obligations in connection with the Project, including City’s consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of City and its direct and indirect consultants, contractors and subcontractors, excluding Project Co and any Subcontractor and their respective Personnel.

- (f) **“City Supplied Third Party Intellectual Property”** means Intellectual Property, Owned by a person other than City, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by City to Project Co under the Project Agreement for the purpose of performing the Works and the Project, including any Background Information.
- (g) **“City Trade-Marks”** means the Trade-Marks Owned by the City.
- (h) **“Copyleft Licence”** means any licence that requires, as a condition of use, modification and/or distribution of Copyleft Materials, that such Copyleft Materials, or other software or content incorporated into, derived from, used, or distributed with such Copyleft Materials: (i) in the case of software, be made available or distributed in a form other than binary (e.g., source code form), (ii) be licensed for the purpose of preparing derivative works, (iii) be licensed under terms that allow the products or portions thereof or interfaces therefor to be reverse engineered, reverse assembled or disassembled (other than by operation of law), or (iv) be redistributable at no license fee. Copyleft licences include the GNU General Public License, the GNU Lesser General Public License, the Mozilla Public License, the Common Development and Distribution License, the Eclipse Public License, and all Creative Commons “sharealike” licenses.
- (i) **“Copyleft Materials”** means any software or content subject to a Copyleft Licence.
- (j) **“Deliverable”** means any item required to be supplied or delivered by Project Co to the City within the Project Scope, including Equipment, Project Software, Project Data and all other deliverable requirements specified in Schedule 10 – Review Procedures.
- (k) **“Delivered”** means, with respect to any Intellectual Property, that such Intellectual Property is:
- (i) a Deliverable;
  - (ii) incorporated, embedded or otherwise included in any Deliverable, the Works (excluding the Vehicles) or any part of the work delivered as part of the Project Operations;
  - (iii) necessary for the undertaking, completion and performance of the Project Operations or any Equivalent Activity; or
  - (iv) necessary for the Use by the City or a subsequent Licensee of any Deliverable, the Works, or any part of the work delivered as part of the Project Operations or any Intellectual Property in accordance with the rights granted to the City hereunder;
- or that the Use of such Intellectual Property for any of the purposes set out in clause (iii) or (iv) above would infringe the Intellectual Property rights of any Person.
- (l) **“Developed Intellectual Property”** means Intellectual Property that is:
- (i) created or developed, or Ownership of which is acquired, by Project Co, any Subcontractor or any Project Co Personnel, or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope;

- (ii) created, developed or Ownership of which is acquired for the purposes of the Project or the Project Operations; and
- (iii) created or designed based on functional, design and performance specifications provided by the City, or City Personnel, or City Parties;

and, for greater certainty, Developed Intellectual Property does not include any Project Co Intellectual Property used to develop or create the Developed Intellectual Property.

- (m) **“Embedded Software”** means the Project Co Embedded Software, Subcontractor Embedded Software and Third Party Embedded Software.
- (n) **“Equipment”** means all electrical and mechanical equipment, machinery, computer hardware and systems comprising or used in the Works other than as is comprised or contained within the Vehicles.
- (o) **“Equivalent Activity”** means any activity, undertaking or operation relating to the Works done by the City, any permitted assignee of the City pursuant to Section 57.2 of the Project Agreement and/or any other person acting on behalf of or under the authority of the City, which activity, undertaking or operation if done by Project Co would be within the Project Scope, including the Project Operations.
- (p) **“Escrow Agent”** means a recognized provider of escrow services selected by Project Co and approved by the City and having a location within the Province of Ontario with whom the Escrow Materials will be deposited in accordance with Section 3.11.
- (q) **“Escrow Agreement”** means an escrow agreement that meets the requirements of Section 3.11 and pursuant to which Escrow Materials are held by the Escrow Agent and the City are designated as a beneficiary party.
- (r) **“Escrow Materials”** means:
  - (i) with respect to Software, the Source Materials for that Software; and
  - (ii) with respect to Embedded Software, the Source Materials for that Embedded Software.
- (s) **“Escrow Provider”** means:
  - (i) Project Co in respect of the Project Co Licensed Software;
  - (ii) the applicable Subcontractor in respect of any Subcontractor Licensed Software;
  - (iii) the applicable third party licensor in respect of any Third Party Licensed Software;
  - (iv) Project Co in respect of the Project Co Embedded Software;
  - (v) the applicable Subcontractor in respect of any Subcontractor Embedded Software; and
  - (vi) the applicable third party licensor in respect of any Third Party Embedded Software.

- (t) **“Expanded Purposes”** means (i) the Permitted Purposes; and (b) for any other purpose of the City.
- (u) **“Licence”** means a non-exclusive license or sub-license, as applicable, granting the rights and subject to the restrictions and limitations set out in this Schedule 35.
- (v) **“Licensed Intellectual Property”** means, with respect to any Licence, the Intellectual Property that is within the scope of that Licence as provided for in this Schedule 35.
- (w) **“Licensee”** means, in respect of any Licence granted or required to be granted by Project Co pursuant to this Schedule 35, the City or any permitted assignee under Section 57.2 of the Project Agreement that is the holder of that Licence at the relevant time.
- (x) **“Licensor”** means Project Co in respect of the Project Co Licenced Software, the applicable Subcontractor in respect of any Subcontractor Licenced Software, or the applicable third party licensor in respect of any Third Party Licensed Software.
- (y) **“Limited Modification Rights”** in respect of a Software or an Embedded Software, means the right to configure, customize or modify such Software or Embedded Software, without access to the Source Materials thereto, in order to have complete and unrestricted access to, or otherwise Use, all the functionalities within such Software or Embedded Software that is licensed to the City under this Schedule 35.
- (z) **“Modification”** means all corrections, modifications, changes, enhancements, improvements, supplements, customizations or derivative works, and includes the Limited Modification Rights, and **“Modify”** means to make a Modification.
- (aa) **“Open Source Licence”** means any licence meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar licence, including any licence approved by the Open Source Initiative, or any Creative Commons Licence. For the avoidance of doubt, Open Source Licences include Copyleft Licences.
- (bb) **“Open Source Materials”** means any software or content subject to an Open Source Licence.
- (cc) **“Operational and Maintenance Data”** means the data, logs and recordings created or generated during the operation and maintenance of the Expanded Trillium Line, whether stored in a data warehouse, Vehicle or any other location, including all CCTV recordings, voice recordings (PA, radio, telephone, intercom), SCADA logs, S&TCS logs, IAC logs, Vehicle logs, PVIS messages and other logs and reports related to the operation and maintenance of the Expanded Trillium Line.
- (dd) **“Ownership”** means, in respect of any Intellectual Property, ownership of all right, title and interest in and to that Intellectual Property and **“Own”**, **“Owned”** and **“Owner”** shall have corresponding meanings.

- (ee) **“Permitted Purposes”** means:
- (i) during the Project Term, performance of the City’s obligations and the exercise of the City’s rights under the Project Agreement and any other agreements relating to the Project;
  - (ii) during the Project Term, the City’s participation in Project Operations and any activity, undertaking or operation within the Project Scope, including its participation in the design, construction, operation, maintenance, repair, correction and renovation of the Works;
  - (iii) after the Project Term, any Equivalent Activity;
  - (iv) both during and after the Project Term, the use, integration and interoperation of the Works with:
    - (A) any existing or other transit projects undertaken by or on behalf of the City or interfacing with the City projects, including any Integrated System Extension; and
    - (B) any existing or after-acquired systems, software, technology or equipment related to the use, operation, maintenance, repair, correction, renovation of the Works and any Integrated System Extension;but, for clarity, not any system that is not the Works or an Integrated System Extension;
  - (v) both during and after the Project Term, the integration and interoperation of the Works with any existing or other transit projects undertaken by or on behalf of the City or interfacing with the City projects;
  - (vi) both during and after the Project Term, and so long as the Licensee is the City or other Governmental Authority:
    - (A) the provision of governmental services and the conduct of operations and activities provided in connection or otherwise associated with the Works and any Integrated System Extension and the Lands by the City or any Governmental Authority or any emergency service provider; and
    - (B) the development of transportation standards, policies and procedures.
- (ff) **“Personnel”** means (i) in reference to Project Co, the Project Co Personnel, (ii) in reference to the City, City Personnel, and (iii) in reference to any Subcontractor, such Subcontractor’s Personnel.
- (gg) **“Project Co Embedded Software”** means computer software that is Owned by Project Co and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
  - (ii) is not licensed separately and apart from that Equipment; and

- (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (hh) **“Project Co Intellectual Property”** means:
  - (i) Intellectual Property that is Owned, created, developed or acquired by Project Co or any Project Co Personnel:
    - (A) prior to the Project Term; or
    - (B) during the Project Term but outside the Project Scope; or
    - (C) during the Project Term and within the Project Scope, but which is not City Intellectual Property, City Supplied Third Party Intellectual Property, Subcontractor Intellectual Property, Intellectual Property of the Revenue Vehicle Supplier or Third Party Intellectual Property;
  - (ii) the Project Co Licensed Software;
  - (iii) the Project Co Embedded Software;
  - (iv) Project Co’s Technical Information;
  - (v) the Project Intellectual Property;
  - (vi) the Project Data, excluding: (A) all Operational and Maintenance Data; and (B) any other Project Data that are specified in a Variation or by separate agreement of the City and Project Co to be Owned by the City;
  - (vii) any Developed Intellectual Property that is specified in a Variation or by separate agreement of the City and Project Co to be Owned by Project Co; and
  - (viii) Subject to Section 49.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, the City, City Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (ii) **“Project Co Licensed Software”** means any computer software that is Owned by Project Co, is not Project Co Embedded Software and is delivered, supplied or otherwise provided by Project Co under the Project Agreement as or as part of any Deliverable.
- (jj) **“Project Co Personnel”** means persons acting on behalf of Project Co or employed, engaged or retained by Project Co in connection with the performance of Project Co’s obligations under the Project Agreement, including Project Co’s consultants, contractors and Subcontractors and the employees, officers, directors, volunteers and agents of Project Co and its direct and indirect consultants, contractors and Subcontractors.
- (kk) **“Project Data”** means:
  - (i) all Design Data;

- (ii) all drawings, reports, documents, plans, formulae, calculations and other data prepared by Project Co relating to the performance of the Maintenance and Rehabilitation Services;
  - (iii) all Operational and Maintenance Data; and
  - (iv) any other materials, documents and/or data prepared by or on behalf of Project Co or Subcontractors in relation to the Project Operations or the Project Agreement, excluding the Jointly Developed Materials, the Background Information and any Developed Intellectual Property.
- (ll) **“Project Intellectual Property”** means Intellectual Property that is created or developed, or Ownership of which is acquired, by Project Co, any Subcontractor or any Project Co Personnel or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope, and which is created, developed or acquired for the purposes of the Project or the Works, but excluding Project Software, Embedded Software, Project Data, Developed Intellectual Property and Technical Information.
- (mm) **“Project Scope”** means the scope of the Project, including the performance of all Project Operations, as defined by the terms of the Project Agreement.
- (nn) **“Project Software”** or **“Software”** means any Project Co Licensed Software, Subcontractor Licensed Software and Third Party Licensed Software, but does not include Embedded Software.
- (oo) **“Software Maintenance and Support”** means, with respect to any Software, the software maintenance and support services for that Software that form part of the Maintenance and Rehabilitation Services or that are provided separately under a software maintenance and support agreement with the licensor of that Software.
- (pp) **“Software Tools”** means, with respect to any Software or Embedded Software, any routines, compilers, bootstraps, analyzers, monitors, toolkits and other software tools used by the licensor of such Software or Embedded Software in connection with the programming, compiling, maintenance, debugging, analysis, configuration, customization, verification or monitoring of such Software or Embedded Software.
- (qq) **“Source Materials”** means:
- (A) a complete source code version of the Software or Embedded Software, in machine-readable form which, when compiled, will produce the executable version of the Software or Embedded Software and in human-readable form with annotations in the English language or such other language as is acceptable to the City, acting reasonably, in both cases on a storage medium suitable for long term archival storage;
  - (B) a complete copy, in English or such other language as is acceptable to the City, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials, including programmer’s notes, technical or otherwise, for the Software or Embedded Software as may be required for a person other than the licensor of the Software

or Embedded Software, using a competent computer programmer possessing ordinary skills and experience, to further develop, maintain and operate the Software or Embedded Software without further recourse to the licensor, which will include, to the extent such items have been or are created for such Software or Embedded Software, general flow charts, input and output layouts, field descriptions, volumes and sort sequence, data dictionary, file layouts, processing requirements and calculation formulae, circuit diagrams and the details of all algorithms and which shall be deemed to include those materials, as revised from time to time; and

- (C) all Software Tools for such Software or Embedded Software, to the extent not previously delivered with the Software or Embedded Software.
- (rr) **“Subcontractor Embedded Software”** means computer software that is Owned by a Subcontractor and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
  - (ii) is not licensed separately and apart from that Equipment; and
  - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (ss) **“Subcontractor Intellectual Property”** means, with respect to each Subcontractor:
- (i) Intellectual Property that is Owned, created, developed or acquired by that Subcontractor:
    - (A) prior to the Project Term; or
    - (B) during the Project Term but outside the Project Scope; or
    - (C) during the Project Term and within the Project Scope, but which is not City Intellectual Property, City Supplied Third Party Intellectual Property, Project Co Intellectual Property, Intellectual Property of the Vehicle Manufacturer or Third Party Intellectual Property;
  - (ii) the Subcontractor Licensed Software;
  - (iii) the Subcontractor Embedded Software;
  - (iv) the Subcontractor’s Technical Information; and
  - (v) subject to Section 49.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, the City, City Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (tt) **“Subcontractor Licensed Software”** means any computer software that is Owned by a Subcontractor, is not Subcontractor Embedded Software and is delivered, supplied or otherwise provided by the Subcontractor under the Project Agreement, the Subcontract as or as part of any Deliverable.

- (uu) “**Subcontractor Personnel**” means, with respect to any Subcontractor, persons acting on behalf of that Subcontractor or employed, engaged or retained by that Subcontractor in connection with the performance of that Subcontractor’s obligations under the Project Agreement or the Subcontract, including the Subcontractor’s consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of the Subcontractor and its direct and indirect consultants, contractors and subcontractors.
- (vv) “**System Architecture and Look and Feel**” means any work product, including any Intellectual Property therein, Owned, created, developed, acquired or licensed whether by Project Co or any Subcontractor in respect of any aspect of the architecture or look and feel of the System, including without limitation all designs, design details, drawings, specifications, prototypes, documentation, works and all instruments of architectural service that relate to the design identity, look and feel of any aspect of the architectural and landscape design whether in respect of the stations, stops, landscape and urban design elements, furniture, fit and finish, or any other aspect of the System.
- (ww) “**Technical Information**” means technical information relating to any Equipment supplied or Intellectual Property licensed under the Project Agreement, including software documentation, user and operating manuals, maintenance and repair manuals, parts lists and other materials relevant to the use, operation, maintenance or repair of such Equipment or Intellectual Property.
- (xx) “**Third Party Embedded Software**” means computer software that is not Owned by the City, Project Co or a Subcontractor and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
  - (ii) is not licensed separately and apart from that Equipment; and
  - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (yy) “**Third Party Intellectual Property**” means Intellectual Property Owned by a person other than the City, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by Project Co or a Subcontractor under the Project Agreement as or as part of any Deliverable, including Third Party Licensed Software and Third Party Embedded Software.
- (zz) “**Third Party Licensed Software**” means any computer software that is not Owned by the City, Project Co or a Subcontractor, is not Third Party Embedded Software and is delivered, supplied or otherwise provided by Project Co or a Subcontractor under the Project Agreement as or as part of any Deliverable.
- (aaa) “**Trade-Mark Licence Agreement**” means the trademark licence agreement entered into between Project Co and the City providing for the license by the City of City Trade-Marks to Project Co, being substantially in the form of Appendix A attached to this Schedule 35.
- (bbb) “**Use**” means, with respect to any Intellectual Property, to do any and all things with that Intellectual Property that the Owner of that Intellectual Property could do, including to load, transmit, access, execute, use, store, display, copy, adapt, translate, incorporate into other

materials, practice, make and have made, but specifically excluding the right to Modify and subject to any limitations in the provision of this Schedule 35 pursuant to which a Licence is granted.

## 2. OWNERSHIP

**2.1 Project Co Intellectual Property:** Project Co shall be and remain the sole and exclusive Owner of the Project Co Intellectual Property. For certainty, nothing in this Schedule 35 shall transfer to Project Co any Ownership of, or grant to Project Co any right in respect of, City Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property, except for the Licence granted under Section 3.1.

**2.2 City Intellectual Property:** The City shall be and remain the sole and exclusive Owner of City Intellectual Property. For certainty, nothing in this Schedule 35 shall transfer to the City any Ownership of, or grant to the City any right in respect of, the Project Co Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any City Intellectual Property, except for the Licence granted under Section 3.2.

For greater clarity and without limiting the City's Ownership rights, Project Co acknowledges and agrees that the City shall be entitled to Use and Modify the Developed Intellectual Property (other than any Developed Intellectual Property that is specified in a Variation or by separate agreement of the City and Project Co to be Owned by Project Co) in any manner and for any purpose whatsoever, including without limitation in connection with the Expanded Purposes.

**2.3 Subcontractor Intellectual Property:** As between the City and Project Co, but subject to any agreement to the contrary between Project Co and any Subcontractor, each Subcontractor shall be and remain the sole and exclusive Owner of its Subcontractor Intellectual Property.

**2.4 City Supplied Third Party Intellectual Property:** As between the City and Project Co, but subject to any agreement to the contrary between the City and the Owner of any City Supplied Third Party Intellectual Property, the Owner of any City Supplied Third Party Intellectual Property shall be and remain the sole and exclusive Owner of any City Supplied Third Party Intellectual Property. For certainty, nothing in this Schedule 35 shall transfer to Project Co or any Subcontractor any Ownership of, or grant to Project Co or any Subcontractor any right in respect of, City Supplied Third Party Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property or any City Intellectual Property or any Subcontractor Intellectual Property, except for the Licence granted under Section 3.1.

## 2.5 Assignments

(a) If, notwithstanding Section 2.1, 2.2, 2.3 or 2.4 or Section 49.4 of the Project Agreement, either party (the "**Assignor**") retains, acquires or owns any right, title or interest in or to any Intellectual Property that is to be Owned by another person (the "**Assignee**") pursuant to Section 2.1, 2.2, 2.3, or 2.4 or Section 49.4 of the Project Agreement as applicable, (the "**Assigned Intellectual Property**"), then the Assignor will assign, and for no further consideration and without any further act or formality does hereby irrevocably assign, to the Assignee all of the Assignor's

worldwide right, title and interest in and to the Assigned Intellectual Property free and clear of all liens, claims, charges or encumbrances, but subject to any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 35.

- (b) If and to the extent that the assignment pursuant to Subsection 2.5(a) is not effective on the date hereof or on any future date, either generally or pursuant to the laws of any jurisdiction, then any and all right, title and interest in and to the Assigned Intellectual Property that is retained, acquired or owned by the Assignor (collectively, the “**Trust Rights**”), will be held by the Assignor in trust for the exclusive benefit and use of the Assignee, except for any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 35, and the Assignor will execute and deliver to the Assignee such transfers, assignments, documents and instruments as may be necessary to transfer and assign to the Assignee the Trust Rights, free and clear of all liens, claims, charges or encumbrances, promptly upon receipt thereof from the Assignee, and will otherwise cooperate with the Assignee to give effect to, record and register the Assignee’s ownership of the Trust Rights.
- (c) Project Co will include in each Subcontract provisions equivalent to Subsections 2.5(a) or 2.5(b) with respect to: (i) City Intellectual Property, Jointly Developed Materials, Developed Intellectual Property, Project Data and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that the City remains at all times the sole and exclusive Owner of all such property; and (ii) the Intellectual Property of the Revenue Vehicle Supplier and City Supplied Third Party Intellectual Property and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that the Revenue Vehicle Supplier or the Licensor, as applicable, remains at all times the sole and exclusive Owner of all such property.

**2.6 Personnel:** The City and Project Co shall, and Project Co shall include in each Subcontract an obligation of each Subcontractor to, ensure that their respective Personnel shall:

- (a) by duly executed written agreement or by operation of law, irrevocably and unconditionally sell, assign and transfer to that party all right, title and interest that its Personnel may have in or to any and all Intellectual Property referred to in this Schedule 35 and all Modifications thereto, such that agreements as to Ownership of Intellectual Property pursuant to Sections 2.1, 2.2, 2.3 or 2.4 and Section 49.4 of the Project Agreement and the assignment by that party pursuant to Section 2.5 include all right, title and interest of its Personnel; and
- (b) by duly executed written agreement, irrevocably waive all non-transferable rights, including moral rights, that they have or may have in any Intellectual Property assigned by such Personnel pursuant to Subsection 2.6(a) in favour of the assignee and its successors, assigns and licensees.

### **3. LICENCES**

#### **3.1 Licence by the City to Project Co**

- (a) Subject to Subsection 3.1(d), the City hereby grants to Project Co:
  - (i) a royalty free, fully paid-up, limited Licence to Use and Modify City Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under the Project Agreement;

- (ii) a limited Licence to Use City Supplied Third Party Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under the Project Agreement.
- (b) Subject to Subsection 3.1(d), Project Co may sublicense its rights under the Licence granted in Subsection 3.1(a) to any Subcontractor for the sole purpose of and only to the extent necessary for the performance by that Subcontractor of its obligations under its Subcontract.
- (c) Except as provided in Subsection 3.1(b), Project Co may not transfer, assign, sublicense or otherwise dispose of the Licence granted under Subsection 3.1(a) without the prior written consent of the City, which consent may be given or refused by the City in its absolute and unfettered discretion.
- (d) The Licence of any City Supplied Third Party Intellectual Property pursuant to Subsection 3.1(a) shall be subject to the terms and conditions of the license agreement between the City and the licensor of City Supplied Third Party Intellectual Property. The City will provide to Project Co a copy of any such third party license agreement (which may be redacted as to financial and other terms not relevant to use of City Supplied Third Party Intellectual Property by Project Co and Subcontractors), or where prohibited from doing so by obligations of confidentiality to the third party licensor, a summary of the obligations, limitations and restrictions applicable to use of City Supplied Third Party Intellectual Property by Project Co and Subcontractors. Project Co will comply, and will require any Subcontractor to comply, with the terms and conditions of such third party license agreement (as set out in the copy of the third party license agreement or summary thereof provided by the City to Project Co) to the extent applicable to Project Co and any Subcontractor in the performance of their respective obligations under the Project Agreement and any Subcontract. If requested by the City, Project Co will, and will require any Subcontractor to, execute and deliver to the City and the third party licensor an agreement that includes reasonable terms for the protection of the confidentiality of City Supplied Third Party Intellectual Property and an acknowledgement of the third party licensor's ownership thereof, unless Project Co disputes such ownership.
- (e) [Intentionally deleted].
- (f) The Licence granted to Project Co under: Subsection 3.1(a)(i), and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the expiry or termination of Project Co's services and other obligations under the Project Agreement; Subsections 3.1(a)(ii) and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the earlier of: (A) expiry or termination of Project Co's services and other obligations under the Project Agreement; and (B) the termination of the contract in respect of the applicable City Supplied Third Party Intellectual Property or the City's licence or sublicense rights thereunder.
- (g) The Licences granted to Project Co under Section 3 do not include licences to any City Trade-Marks. The use of any City Trade-Marks shall be governed by the terms of the Trade-Mark Licence Agreement.

### **3.2 Licence by Project Co to the City**

- (a) Project Co hereby grants to the City a Licence to:

- (i) Use and Modify the Project Co Intellectual Property (excluding Project Co Licensed Software and Project Co Embedded Software) that is Delivered and the Subcontractor Intellectual Property (excluding the Subcontractor Licensed Software and the Subcontractor Embedded Software) that is Delivered;
- (ii) Use, and have Limited Modification Rights to, the Project Co Licensed Software that is Delivered and the Subcontractor Licensed Software that is Delivered and only in respect of the modules that are Delivered; and
- (iii) Use, and have Limited Modification Rights to, the Project Co Embedded Software and the Subcontractor Embedded Software as part of and for the Use of the Equipment in which such software is included, embedded or otherwise incorporated;

for the Permitted Purposes. Subject to Section 3.11, the Licenses granted pursuant to this Section 3.2 in respect of Project Software and Embedded Software apply to only object code versions thereof and not the source code materials for any such Project Software or Embedded Software.

In addition and notwithstanding any other provision of this Schedule 35, Project Co hereby grants to the City a Licence to Use and Modify any System Architecture and Look and Feel that is not owned by the City pursuant to this Schedule 35, for the Expanded Purposes.

- (b) The Licence granted pursuant to this Section 3.2 will be irrevocable (except as provided in Subsection 3.2(d)), perpetual, royalty free, fully paid-up (upon payment of the fees specified in the Project Agreement for the Deliverable which consists of or incorporates the Licensed Intellectual Property in respect of which the Licence is granted), and permit Use by the City on an enterprise basis without restriction or limitation as to users (whether by number, identity or otherwise), location, capacity, authorized system or otherwise, as part of or in connection with the Works, or in the case of the System Architecture and Look and Feel, in connection with the Expanded Purposes.
- (c) The Licence granted pursuant to this Section 3.2 may be transferred, assigned, sublicensed and otherwise disposed of by the City subject to and in accordance with Section 57.2 of the Project Agreement, provided that the Licence in respect of Project Co Embedded Software and Subcontractor Embedded Software may only be transferred together with the Equipment in which such software is included, embedded or otherwise incorporated.
- (d) The Licence granted pursuant to this Section 3.2 may not be terminated except (i) in the event of the failure of the Licensee to pay the applicable fees as provided for in the Project Agreement for the specific Deliverable which consists of or incorporates the Licensed Intellectual Property, and such failure is not remedied by the Licensee within sixty (60) days after notice by Project Co to the Licensee demanding that such failure be remedied and (ii) in case of wilful breach of the Licence provided by the Revenue Vehicle Supplier only under the Revenue Vehicle Supply Contract by the Licensee or any authorized sublicensee, provided that any such termination shall apply only to the Licensed Intellectual Property to which such failure applied and not to any other Licensed Intellectual Property. Except as specifically provided in this Subsection 3.2(d), Project Co shall not be entitled to terminate or rescind the Licence granted under this Section 3.2, and if the Licensee commits any other breach of or default under this Schedule 35 or the Project Agreement, whether material or not and whether that breach or default is or is not capable of being remedied, Project Co's rights and remedies in respect of that breach or default shall be

limited to such rights and remedies other than termination or rescission of the Licence granted under this Section 3.2 as may exist at law or in equity, it being acknowledged by Project Co that except as provided in this Subsection 3.2(d) the Licence granted under this Section 3.2 is perpetual and irrevocable. No breach of or default under this Schedule 35 by the City shall constitute a repudiation of the Licence granted under this Section 3.2 by the City.

- (e) The Licensee may provide and disclose the Licensed Intellectual Property to any employee, contractor, subcontractor, consultant, service provider, outsourcer or other person retained by the Licensee in connection with the Permitted Purposes, except in respect of the System Architecture and Look and Feel in connection with the Expanded Purposes, and any such employee, contractor, subcontractor, service provider, outsourcer or other person may exercise all rights to Use and Modify the Licensed Intellectual Property as may be granted by the Licensee to such person within the scope of the Licence granted by Project Co to the Licensee pursuant to this Schedule 35, provided that the Licensee shall be responsible for anything done or failed to be done by any employee, contractor, subcontractor, service provider, outsourcer or other person to whom the Licensee provides and discloses the Licensed Intellectual Property, including a breach by any such person of the City's obligations of confidentiality in respect of any Confidential Information that is or is part of Licensed Intellectual Property.
- (f) The Licensee may Use Project Software that is licensed pursuant to this Section 3.2 in multiple environments or instances, including for training, development, testing, staging, and disaster recovery and in a live, production or operating environment.
- (g) The Licensee may make copies of the Licensed Intellectual Property as may be reasonably necessary for Use and Modification of the Licensed Intellectual Property in accordance with the Licence granted pursuant to this Section 3.2 or otherwise this Schedule 35. All such copies shall be Owned by Owner of the original Licensed Intellectual Property and licensed to the Licensee pursuant to this Section 3.2. Except as permitted by this Schedule 35, the Licensee will not copy, Modify, disassemble, reverse engineer, decompile, translate or otherwise obtain or create the source code for any Project Co Intellectual Property, Project Co Licensed Software, Project Co Embedded Software, Subcontractor Intellectual Property, Subcontractor Licensed Software or Subcontractor Embedded Software.
- (h) The Licensee will not remove from any Licensed Intellectual Property any markings or notices with respect to the ownership thereof, copyright therein or the confidentiality thereof.
- (i) Where the City has the right to Modify any Licensed Intellectual Property, Project Co shall ensure that all authors of such Licensed Intellectual Property have waived all moral rights that such authors may have therein in favour of the City and its successors, assigns and licensees.

### **3.3 Licences with Subcontractors**

- (a) Project Co will be responsible to obtain from each Subcontractor the right to grant the Licence under Section 3.2 in respect of the Subcontractor Intellectual Property.
- (b) Project Co will be responsible to obtain from each Subcontractor the right to Use and Modify the Subcontractor Intellectual Property to the extent necessary for Project Co to perform its obligations under the Project Agreement, on such terms as are not in breach of or conflict with the Project Agreement.

- (c) Project Co will be responsible to grant to each Subcontractor the right to Use and Modify City Intellectual Property and Project Co Intellectual Property to the extent necessary for each Subcontractor to perform its obligations under its Subcontract, on such terms as are not in breach of or conflict with the Project Agreement.

**3.4 Third Party Intellectual Property:** Project Co will not, and will not permit any Project Co Personnel, Subcontractor or Subcontractor Personnel to, incorporate, embed or otherwise include in the Works or any Deliverable any Third Party Intellectual Property unless:

- (a) for Third Party Intellectual Property other than Third Party Embedded Software, such Third Party Intellectual Property is provided by the Owner thereof pursuant to a license agreement that:
- (i) grants to the Licensee rights equivalent to or better than the rights granted under the Licence in Section 3.2, including being assignable in accordance with Subsection 3.2(c), and, where the Third Party Intellectual Property is software or includes software, provides for the maintenance and support of that software on terms acceptable to the City; or
  - (ii) has been approved by the City in writing, which approval may be given or refused by the City in its absolute and unfettered discretion;

and such license agreement, if not entered into with the City directly, has been assigned or is freely assignable to the City;

- (b) for Third Party Embedded Software, either (i) such Third Party Embedded Software is embedded in Equipment and is not provided by the Owner thereof pursuant to a license agreement, but may be used by the City or any subsequent owner of the machine or equipment as part of and for the intended purposes of such machine or equipment upon the purchase thereof, or (ii) such Third Party Embedded Software is subject to a license agreement that complies with Subsection 3.4(a).
- (c) If Project Co, Project Co Personnel, Subcontractor or Subcontractor Personnel incorporates, embeds or includes any Third Party Intellectual Property in the Works or any Deliverable other than in compliance with this Section 3.4, then in addition to any other rights and remedies the City may have against Project Co, Project Co will at its sole cost and expense take all necessary steps to comply with this Section 3.4 or, if Project Co is unable to do so, to remove such Third Party Intellectual Property and replace it with Project Co Intellectual Property that provides the same functionality and performance as such Third Party Intellectual Property and which will operate within the Works without any degradation thereof or adverse effect thereon, and which will be included in the Project Co Intellectual Property for the purposes of the Licence granted pursuant to Section 3.2.

**3.5 Non-Assertion:** Project Co agrees not to assert, and to cause its Subcontractors not to assert, any Intellectual Property right against the City or any Licensee that would have the effect of diminishing the rights granted to the City or any Licensee hereunder. Without limiting the generality of the foregoing, Project Co will not sue, and will cause its Subcontractors not to sue, the City or any Licensee on the basis that any Equivalent Activity or the Ownership or Use of the Works or any Deliverable within the scope of the Permitted Purposes infringes any Intellectual Property right of Project Co or any Subcontractor.

- 3.6 Deliveries:** Project Co will deliver to the City all Licensed Intellectual Property at the times specified in the Project Agreement, or where no time is specified, on or before the Final Completion Date or the Termination Date, whichever is first to occur. The media on which Project Software is delivered and tangible copies or embodiments of any Licensed Intellectual Property other than Project Software and will be the property of the City, notwithstanding Project Co's, a Subcontractor's or a third party's Ownership of the Licensed Intellectual Property. If any Licensed Intellectual Property requires software in order to Use that Licensed Intellectual Property, Project Co will ensure that such software will be commercially available to the City at a reasonable license fee, or if such software is not commercially available, Project Co will at its cost provide such software and a license therefor to the City and City Parties on terms and conditions that do not result in any impairment of the City's Use of the Licensed Intellectual Property in accordance with the Licence therefor.
- 3.7 Pass Through Obligations:** Project Co is responsible to include in all contracts with Project Co Personnel and in all Subcontracts with Subcontractors such terms and conditions as may be necessary for Project Co to grant, or obtain for the City, the Ownership, Licences, rights and benefits provided for in this Schedule 35.
- 3.8 Conflicting Software Licences:** All software referenced in this Schedule 35 will be licensed in accordance with this Schedule 35, and any form of software license agreement used or provided by a licensor in association with any such software will be of no force or effect and will not be binding on the City or any other Licensee, even if by its terms such software license agreement is stated to be accepted by the installation or use of the software, and regardless of any acceptance of such software license agreement that is required in order to install or use the software.
- 3.9 Trade-Marks and Names:** Except as expressly set forth: (a) in the Trade-Mark Licence Agreement; (b) the Project Agreement; or (c) otherwise in a writing executed by each of the City and Project Co, neither Party shall use any Trade-Marks owned by the other Party, or use the names or any identifying logos or otherwise of the other Party in any advertising or permit them so to be used.
- 3.10 Open Source.** Project Co shall not, and shall cause the Subcontractor not to, incorporate, embed or include any Open Source Materials in any Deliverables, City Intellectual Property, City Supplied Third Party Intellectual Property, or the Intellectual Property of the Revenue Vehicle Supplier without the prior written consent of the City.
- 3.11 Escrow Agreements**
- (a) If requested by the City (which for the purposes of this Section 3.11 includes any permitted assignee under Section 57.2 of the Project Agreement), at any time during the Project Term, Project Co will, or will require the applicable Subcontractor or third party licensor to, enter into an Escrow Agreement for any Software or Embedded Software (an "**Escrowed Deliverable**") on terms that comply with this Section 3.11, or amend its existing Escrow Agreement for such Software or Embedded Software to comply with this Section 3.11, and add the City as a beneficiary under the Escrow Agreement.
- (b) The Escrow Provider will deposit with the Escrow Agent the Escrow Materials for the Escrowed Deliverable and all Modifications thereto provided by the Escrow Provider to the City as part of the Project Operations, Software Maintenance and Support (if purchased by or on behalf of the

- City) or any other services performed by the Escrow Provider for the City, and in the case of Software or the Embedded Software, the Escrow Provider will update the Escrow Materials to conform to the then-current version of the Software in use by the City including all Modification thereto made for the benefit of the City.
- (c) The City will have the right, on reasonable notice to the Escrow Provider and the Escrow Agent, to verify that the Escrow Materials conform to the Escrowed Deliverable supplied to and in use by the City to which the Escrow Materials relate. In addition, the City may purchase such additional verification services as may be offered by the Escrow Agent and the Escrow Provider will cooperate with the City and the Escrow Agent in the performance of those verification services.
- (d) The City will have the right to obtain from the Escrow Agent a copy of the Escrow Materials upon any of the following events:
- (i) the Escrow Provider is bankrupt;
  - (ii) a trustee, receiver, manager, receiver-manager, custodian or Person having similar authority is appointed for the Escrow Provider or its business and assets and is not released or removed within 30 days after the appointment;
  - (iii) the Escrow Provider seeks protection from its creditors or undertakes any reorganization for the purpose of obtaining relief from its creditors;
  - (iv) the Escrow Provider ceases to carry on business; or
  - (v) in the case of Software, if the City is purchasing Software Maintenance and Support for the Software in respect of which the Escrow Materials have been deposited, if the Escrow Provider has given the City or any of its representatives notice that it will no longer provide Software Maintenance and Support or if the Escrow Provider defaults in the performance of Software Maintenance and Support and does not remedy that default within thirty (30) days after receipt of notice from the City demanding that the Escrow Provider do so.
- (e) Project Co shall ensure that the Escrow Agreement: (i) requires the Escrow Agent to release the Escrow Materials to the City if any of the events listed in Section 3.11(d) occur; (ii) does not contain any provision placing any obligation on the City, including without limitation, any indemnity obligation; and (iii) complies with and does not contradict any provision of this Section 3.11. Where this Section 3.11 places an obligation on the Escrow Agent, Project Co shall cause the Escrow Agent to comply with all such obligations.
- (f) Project Co hereby grants, and Project Co shall ensure that all Escrow Providers grant to the City as of the date the applicable Software or the applicable Embedded Software is used in connection with the Project Scope, a Licence to:
- (i) Use the Escrow Materials to enable the City to Use the Escrowed Deliverable to which the Escrow Materials relate for the Permitted Purposes, and where the Escrowed Deliverable is or contains Licensed Intellectual Property in accordance with the Licence applicable thereto;

- (ii) make Modifications to the Escrow Materials notwithstanding any contradictory term or condition in the Licence applicable to the Escrowed Materials which Modifications are only used for the Permitted Purposes or the Expanded Purposes, as applicable, and are subject to confidentiality obligations under Subsection 3.11(f)(v);
  - (iii) recompile versions of the Software or Embedded Software from the Escrow Materials, which recompiled versions shall be deemed to form part of the Software or Embedded Software and be subject to the terms hereof;
  - (iv) make only those copies of the Escrow Materials that the City reasonably requires for the purposes set out in Subsections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii); and
  - (v) disclose the Escrow Materials, or any part thereof, only to agents, employees or contractors of the City as reasonably required for the purposes set out in Subsections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii), provided that such agents, employees and contractors are bound by obligations of confidentiality in respect of any Escrow Materials disclosed to them, the breach of which shall constitute a breach by the City of its obligations of confidentiality in respect of the Escrow Materials.
- (g) The Licence granted pursuant to Subsection 3.11(f) will:
- (i) where the Escrow Provider is Project Co or a Subcontractor, form part of the Licence granted pursuant to Section 3.2; or
  - (ii) where the Escrow Provider is a third party, form part of the license granted by such third party to the City;
- and in either case remain in effect for so long as such licence remains in effect.
- (h) Except where the City (i) terminates the Escrow Agreement, (ii) has a renewal right and fails to renew the Escrow Agreement, or (iii) fails to make payments as set out in Section 3.11(i), the Escrow Provider will not terminate or fail to renew the Escrow Agreement without entering into a new Escrow Agreement with a replacement escrow agent on terms and conditions substantially the same as the Escrow Agreement and this Section 3.11.
- (i) The City will pay all fees charged by the Escrow Agent in association with the deposit and maintenance of the Escrow Materials by the Escrow Agent under the Escrow Agreement for the benefit of the City. The Escrow Provider shall have no responsibility or liability arising from any failure of the City to pay fees when due in order to maintain the Escrow Materials with the Escrow Agent.
- (j) If the City receives the Escrow Materials, then as between the City and Project Co and notwithstanding any other provision of the Project Agreement, the City will own all Modifications to the Escrow Materials made by or for the City and all Intellectual Property in such Modifications.

**3.12 Modifications:** Notwithstanding the granting of any licence pursuant to this Schedule 35, where the City has made any Modification to the Project Co Intellectual Property or the Subcontractor Intellectual Property other than (a) a Modification made by or on behalf of Project Co or a

Subcontractor or otherwise authorized by Project Co or any Subcontractor, or (b) a Modification made through the Limited Modification Rights,

then,

- (i) any warranty provided by Project Co under the Project Agreement shall not apply solely in respect of such Modification;
- (ii) Project Co and the Subcontractors shall not be liable in respect of any Direct Losses arising in connection with such Modifications where such Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications; and
- (iii) the indemnity obligations of Project Co set out in Section 54.1(g) of the Project Agreement shall not apply in respect of any such Modifications where the Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications.

Appendix A

Form of Trade-Mark Licence Agreement

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TRADE-MARK LICENSE AGREEMENT

**THIS TRADE-MARK LICENSE AGREEMENT**, effective as of [DATE] (the “**Agreement**”), is between [the City] (the “**Licensor**”), and [●] (the “**Licensee**”), and Licensor and Licensee are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

**WHEREAS:**

1. Licensor and Licensee are parties to a Project Agreement dated [DATE] (the “**Project Agreement**”);
2. Capitalized terms used but not defined herein have the meanings assigned to them in the Project Agreement and Schedule 35 thereto;
3. Licensor owns the trade-marks shown on Exhibit A (the “**Marks**”);
4. Licensee proposes to use the Marks in [Ontario] (the “**Territory**”) for the Limited Purpose set forth below; and
5. Subject to the terms and conditions set forth herein, Licensor is willing to grant to Licensee, and Licensee is willing to accept, a non-exclusive license to use the Marks pursuant to the terms of this Agreement.

NOW THEREFORE in consideration of the covenants contained herein, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Grant:** Licensor grants to Licensee, and Licensee accepts, a limited, non-transferable, non-exclusive, royalty-free right and license to use the Marks in the Territory for the sole purpose of and only to the extent necessary for the performance by Licensee of the Project Scope and its obligations under the Project Agreement (the “**Limited Purpose**”).
2. **No Right to Sublicense:** Licensee acknowledges and agrees that it does not have the right to sublicense the use of the Marks to any party without the express written consent of Licensor.
3. **Ownership:** Licensee acknowledges Licensor’s ownership of the Marks, and agrees that its use of the Marks shall enure to Licensor’s benefit.
4. **Licensee Covenants:** Licensee acknowledges that Licensor is the owner of all rights in the Marks, and, except as otherwise expressly permitted by this Agreement, Licensee shall not at any time do or suffer to be done any act or thing that will in any way impair the rights of Licensor in and to the Marks. Nothing in this Agreement grants, nor shall Licensee acquire, any right, title or interest in or to the Marks or any goodwill associated with the Marks, other than those rights

expressly granted hereunder. Licensee shall affix to all materials that contain or bear one or more of the Marks such legends and notices as Licensor may reasonably require. At Licensor's request, Licensee shall publish a public notice in the following form, or in any other form prescribed by Licensor from time to time, in appropriate publications addressed to the general public: "[MARK] is a trade-mark owned by [LICENSOR] used under license by [LICENSEE]". Licensee undertakes to comply with all relevant laws and regulations pertaining to trade-marks and marking requirements. Licensee shall execute all documents and provide all assistance reasonably required by Licensor to apply for, obtain and maintain registrations for the Marks, and to enforce rights in, and defend any proceedings brought against applications or registrations for, the Marks.

5. **Restrictions On Use:** Notwithstanding anything contained in this Agreement or otherwise, Licensee shall use the Marks only in accordance with the design, description and/or appearance of the Marks as shown on Exhibit A. Licensee may not change or modify the Marks nor join the mark with any other words or designs. Licensee agrees to abide by any reasonable guidelines provided by Licensor from time to time in connection with the use of the Marks.
6. **Quality Standards and Control:** Licensee agrees that use of the Marks by Licensee in association with any products or services (the "**Products**" and "**Services**") will meet or surpass the standards set by Licensor and conveyed to Licensee from time to time for the character and quality of such Products and Services.
7. **Inspection:** At the request of the Licensor, the Licensee shall provide to Licensor for Licensor's review, comment and approval samples of the any Products and sample copies of materials associated with the Products or Services or used to advertise/promote the Products or Services.
8. **Breach of License:** Licensor may notify the Licensee if it objects to any proposed or actual use of the Marks if in Licensor's sole judgment (acting reasonably) Licensor believes that the Marks is being used or proposed to be used in a manner that erodes the goodwill associated with the Marks or otherwise reduces the value of the Marks. If Licensee is so notified, the Parties shall attempt to settle any dispute and Licensee shall, if directed by Licensor to do so, cease using or cease from using the Marks until the time such dispute has been settled between the Parties or otherwise finally determined.
9. **Infringement:** Licensee shall promptly notify Licensor upon becoming aware of any infringement or dilution of the Marks and shall cooperate fully with Licensor to stop such infringement or dilution. Licensor, in its sole discretion, will take any action that it deems necessary to protect the validity of the Marks, and Licensee hereby waives any rights that it may have pursuant to Section 50(3) of the *Trade-marks Act*.
10. **Indemnification:** Licensor does not assume any liability to Licensee, or third parties, for Licensee's goods or services, including the Products and Services, and Licensee shall defend, indemnify and hold harmless Licensor and its affiliates, successors and assigns, and their respective officers, directors, employees, agents, lawyers and representatives from and against any and all claims, causes of action, suits, damages, losses, liabilities, costs and expenses (including, but not limited to, reasonable lawyer fees and expenses), which may be sustained or suffered as a result of any such third party claims or arising from a breach of this Agreement by

Licensee including, without limitation, any act or omission, which causes or is alleged to cause harm or a violation of any of the rights of any third party.

11. **Breach/Use Outside Limited Purpose:** In the event that Licensee breaches any of the terms of this Agreement, including use of the Marks outside the Limited Purpose or Territory as determined by Licensor in its sole discretion, but acting reasonably, Licensor shall have the option to terminate this Agreement immediately, and if so terminated, all subsequent use by Licensee will be unauthorized and subject to legal action. Upon the termination of this Agreement for any reason, all rights in the Marks granted to Licensee hereunder shall automatically revert to Licensor, Licensee shall have no further rights in the Marks, and Licensee shall immediately change its use of the Marks to uses that do not consist of or include the Marks or any words similar to the Marks. In the event of an unauthorized use of the Marks by Licensee, Licensee consents to the immediate entry of a court injunction preventing Licensee's further use of the Marks.
12. **Termination:** This licence granted to Licensee will terminate upon the expiry or termination of Licensee's services and other obligations under the Project Agreement.
13. **No Agency:** The Parties hereto are independent contractors with respect to each other, and nothing herein shall create any association, partnership, joint venture or agency relationship between them.
14. **Assignment:** Licensee may not convey, sublicense, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of this Agreement without the prior written consent of Licensor, which consent may be unreasonably withheld.
15. **Headings:** The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.
16. **Notices:** All notices, requests, demands and other communications made in connection with this Agreement shall be made in the manner set out in the Project Agreement.
17. **Entire Agreement:** This Agreement constitutes the entire agreement between Licensor and Licensee with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral, written, express or implied, between Licensor and Licensee.
18. **No Waiver:**
  - (a) No waiver made or given by a Party under or in connection with this 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 Party. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
  - (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The

single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

19. **Successors:** This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.
20. **Severability:** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this 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 Agreement. If any such provision of this 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 Agreement as near as possible to its original intent and effect.
21. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province 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. Each of the Parties attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
22. **Counterparts:** The Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to the other Party an original signed copy of the Project Agreement which was so faxed.

*[Remainder of page intentionally blank – Next page is the signature page.]*

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the date set forth above.

**City of Ottawa**

Per:

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

Title:

Per:

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

Title:

I/We have authority to bind the corporation.

[LICENSOR]

Per:

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

Title:

Per:

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

Title:

I/We have authority to bind the corporation.

**EXHIBIT A**

**Trade-marks**

**[To be completed once trade-marks identified.]**

**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**

**SCHEDULE 37**

**[Intentionally Deleted]**

**SCHEDULE 38**

**[Intentionally Deleted]**

**TRILLIUM LINE EXTENSION PROJECT  
REVENUE VEHICLE SUPPLY CONTRACT**

**[REDACTED]**

**SCHEDULE 40**

**UTILITY BASELINE REPORT**

**[REDACTED]**

**SCHEDULE 41**

**LENDERS' DIRECT AGREEMENT**

**THIS LENDERS' DIRECT AGREEMENT** is made as of the 28<sup>th</sup> day of March, 2019.

**BETWEEN:**

**THE CITY OF OTTAWA**

(the "City")

**AND:**

**[REDACTED]**

(the "Lenders' Agent")

**AND:**

**TRANSITNEXT GENERAL PARTNERSHIP [REDACTED]**

(the "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.