

SCHEDULE 23

COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

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 Contract Month or part of a Contract Month from the Termination Date to the Compensation Date, the Post Termination Maintenance Amount is a negative number, the aggregate amount by which all such negative Post Termination Maintenance 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) of this Schedule 23);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value:
 - (A) the Post Termination Maintenance 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) of this Schedule 23,

to the extent that:
 - (C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) of this Schedule 23 have not been directly taken into account in calculating the Estimated Fair Value; and
 - (D) the City has received such amounts in accordance with this 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 Contract Month or part of a Contract Month from the Termination Date to the Compensation Date, the Post Termination Maintenance Amount is a negative number, the aggregate amount by which all such negative Post Termination Maintenance 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) of this Schedule 23);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
 - (A) the Post Termination Maintenance 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) of this Schedule 23,

to the extent that:
 - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) of this Schedule 23 have not been directly taken into account in that Qualifying Tender; and
 - (D) The City has received such amounts in accordance with this Project Agreement.
- (c) **“Compensation Date”** means either:
- (i) if Section 3.3 of this Schedule 23 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 of this Schedule 23 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.

- (d) **“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.
- (e) **“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 this 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.
- (f) **“Estimated Fair Value”** means the amount determined in accordance with Section 3.4 of this Schedule 23.
- (g) **“City Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (h) **“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) of this Schedule 23.
- (i) “**Junior Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time. For greater certainty, the Junior Debt Amount includes any amount funded under the terms of the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than 150% of the coupon payable to the Senior Lenders and excludes the Junior Debt Makewhole. For greater certainty, as of the date of this Project Agreement, there are no Junior Lenders and there is no Junior Debt Amount.
- (j) “**Junior Debt Makewhole**” means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any “**make whole**” payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.
- (k) “**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, the Credit Agreement, the Security Documents, 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 Project Scope or the refinancing of the Project Scope.
- (l) “**Liquid Market**” means that there are 2 or more willing parties (each of whom is capable of being a Suitable Substitute (as defined in the Lenders' Direct Agreement) and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of operation and maintenance services (and if the Termination Date occurs prior to Revenue Service Availability, design and construction services) to systems similar to the System under an alternative financing and procurement or similar model (where such agreements are the same as or similar to this Project Agreement) such that the retendering process in Section 3.3 of this Schedule 23 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 of this Schedule 23.
- (m) “**Market Value Availability Deduction Amount**” means for any Contract Month or part of a Contract Month, an amount equal to the Deductions for Availability Failures that were made from the Monthly Service Payment under the Payment Mechanism in the Contract Month immediately preceding the Termination Date, less an amount equal to Deductions for Availability Failures that were made for Vehicle Availability Failures or Station Availability Failures (as defined in Schedule 20 – Payment Mechanism) 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.

- (n) **“Maximum Monthly 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.
- (o) **“New Agreement”** means an agreement on substantially the same terms and conditions as this Project Agreement as at the Termination Date, but with the following amendments:
 - (i) if the Project Agreement is terminated prior to the Revenue Service Availability Date, then the Longstop Date shall be extended by a period to allow a New Project Co to achieve Revenue Service Availability 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.
- (p) **“New Project Co”** means the person who has entered or who will enter into the New Agreement with the City.
- (q) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (r) **“Post Termination Maintenance Amount”** means, for the purposes of Section 3.3 of this Schedule 23, for the whole or any part of a Contract Month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Monthly Service Payment which would have been payable under this Project Agreement had this 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 Contract Month; and
 - (ii) the Rectification Costs incurred by the City in that Contract Month.
- (s) **“Prohibited Acts Termination Sum”** has the meaning given to it in Section 5.1(b) of this Schedule 23.
- (t) **“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 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 Scope; and
 - (vi) any other tender criteria established by the City, acting reasonably.
- (u) **“Qualifying Tender”** means a tender that meets all of the Qualification Criteria.
- (v) **“Qualifying Tenderer”** means a tenderer who submits a Qualifying Tender.
- (w) **“Rectification Costs”** means, for the purposes of any Termination Date that occurs after the Revenue Service Availability Date, an amount equal to the reasonable and proper costs incurred by the City in a particular Contract Month or part of a Contract Month in ensuring that the Maintenance Services are carried out.
- (x) **“Senior Debt Amount”** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior 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 Senior Lenders under the Lending Agreements is subject to an interest rate hedging agreement between Project Co and a hedge provider, accrued interest in respect of such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co as specified in such hedging agreement, without regard to whether such fixed rate is payable to a Senior Lender or to the hedge provider under such hedging agreement, and all references to interest payable to the Senior Lenders under this Agreement shall be construed accordingly. For greater certainty, the Senior Debt Amount excludes the Senior Debt Makewhole.
- (y) **“Senior Debt Makewhole”** means, (i) at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements with respect to the Senior Debt Amount, including any **“make whole”** payments, breakage fees (less any breakage benefits), and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Senior Lenders pursuant to the Lending Agreements with respect to the Senior Debt Amount; and (ii) any swap breakage fees (less breakage benefits), if any, then due and payable by Project Co to a hedge provider under a hedging agreement entered into with respect to the Senior Debt Amount.
- (z) **“Subcontractor Losses”** means, subject to Project Co’s obligations under this 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 applicable Contract as a direct result of the termination of this 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; and
- (ii) if applicable, the amount reasonably and properly payable by Project Co to the Maintenance Contractor under the terms of the Maintenance Contract as a direct result of the termination of this 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.
- (aa) "**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.
 - (bb) "**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 of this Schedule 23.
 - (cc) "**Tender Process Monitor**" has the meaning given in Section 3.3(g) of this Schedule 23.

2. **COMPENSATION ON TERMINATION FOR THE CITY DEFAULT OR CONVENIENCE**

2.1 Compensation

- (a) If Project Co terminates this Project Agreement pursuant to Section 46 of this Project Agreement or the City terminates this Project Agreement pursuant to Section 47.3 of this 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 Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
 - (iii) any amount payable by the City to Project Co in accordance with Sections 43.2(b) and 44.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and the Subcontractor Losses;
 - (v) any reasonable costs properly incurred by Project Co to wind up its operations; and
 - (vi) 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:

- (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 this 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 this 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 Scope, the Project and this 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 Scope, the Project and this Project Agreement) to the City and, at no

additional cost to Project Co, give the City reasonable assistance in prosecuting such claims;

- (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 this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this 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 34.13(a)(i) of this Project Agreement,

provided that the City Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(viii) of this Schedule 23 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 of this Schedule 23.

3. COMPENSATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) Save and except where Sections 5 or 6 of this Schedule 23 apply, if the City terminates this Project Agreement pursuant to Section 45 of this 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 of this Schedule 23 or the Adjusted Estimated Fair Value according to the no retendering procedure set out in Section 3.4 of this Schedule 23, as applicable.

3.2 Retendering Election

- (a) The City shall be entitled to retender the provision of the Project Scope in accordance with Section 3.3 of this Schedule 23 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 of this Schedule 23 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 of this Schedule 23, Project Co shall continue to perform the Maintenance Services and the City shall pay Project Co in accordance with Section 3.3(e) of this Schedule 23.

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) of this Schedule 23 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 52 of this Project Agreement that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to perform the Maintenance Services, and, for all or any part of a Contract Month falling within the period from the Termination Date to the Compensation Date, the City shall pay to Project Co:
- (i) the Post Termination Maintenance Amount for each completed Contract Month, on or before the date falling 20 Business Days after the end of that Contract Month; and
 - (ii) the Post Termination Maintenance Amount for the period from the end of the last completed Contract Month until the Compensation Date, on or before the date falling 30 days after the Compensation Date.

- (f) If any Post Termination Maintenance Amount is negative, then the amount by which the Post Termination Maintenance Amount is negative shall be carried forward and may be set off against any future positive Post Termination Maintenance 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 and the Lenders 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 or the Lenders but shall be entitled to advise Project Co and the Lenders 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 27 – 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 of this Schedule 23.
- (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 of this Schedule 23. 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 of this Schedule 23 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 of this Schedule 23 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 27 – Dispute Resolution Procedure.

3.4 No Retendering Procedure

- (a) Subject to Section 3.4(b) of this Schedule 23, if the provisions of this Section 3.4 apply, Project Co shall not be entitled to receive any Post Termination Maintenance 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 of this Schedule 23, then the City shall continue to pay to Project Co each Post Termination Maintenance Amount until the Compensation Date in accordance with Section 3.3 of this Schedule 23.
- (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 this Project Agreement, will be made and, if made, will use an assumed inflation rate of 2% 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 Milestone Payments, the Highway Milestone Payment, the Highway Final Payment, the Revenue Service Availability Payment, any unpaid amounts in respect of the completed Civic Works that are due to Project Co pursuant to Section 20.13 of the Project Agreement and the Monthly Service 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) of this Schedule 23) 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 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) reasonably required to perform the activities within the Project Scope to the standard required, including, if applicable, to complete the Design and Construction Works and the Highway Work, any costs reasonably forecast to be incurred by the City for up-front

finance fees and related costs (excluding principal and interest payments) that would not arise at the time or in the future had the termination not occurred, 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 25 – Insurance and Performance Security Requirements; and
- (B) amounts payable by the City in respect of Capital Expenditures under this 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) of this Schedule 23 shall be no greater than the Non-Default Termination Sum.
 - (iv) All costs referred to in Section 3.4(c)(ii) of this Schedule 23 are to be forecast at a level that will deliver the Maintenance Services and perform the other activities within the Project Scope to the standards required by this 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 this 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 27 – Dispute Resolution Procedure.
 - (e) The City shall pay the Adjusted Estimated Fair Value in accordance with Section 8 of this Schedule 23.

4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION BY THE CITY FOR RELIEF EVENT

4.1 Consequences

- (a) If the City terminates this Project Agreement pursuant to Section 47.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 47.2 of this 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:
 - (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount;

- (iii) any amount payable by the City to Project Co in accordance with Sections 43.2(b) and 44.2(b) of this Project Agreement;
- (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit); and
- (v) 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:

- (vi) 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 this 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 this 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 Scope, the Project and this 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 Scope, the Project and this Project Agreement) to the City and, at no additional cost to Project Co, give the City reasonable assistance in prosecuting such claims; and
- (vii) 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 this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this 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

- (viii) amounts which the City is entitled to set off pursuant to Section 34.13(a)(i) of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vii) of this Schedule 23 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 of this Schedule 23.

5. CONSEQUENCES OF TERMINATION FOR PROHIBITED ACTS

5.1 Consequences

- (a) If the City terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 60 of this Project Agreement, the City shall pay to Project Co the Prohibited Acts Termination Sum.
- (b) The "**Prohibited Acts Termination Sum**" shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) any amount payable by the City to Project Co in accordance with Sections 43.2(b) and 44.2(b) of this Project Agreement; and
 - (iii) the following amounts calculated in respect of a Contractor, if the Contractor is not responsible for a Prohibited Act, and which Project Co can demonstrate will be paid directly to such persons:
 - (A) the Employee Termination Payments; and
 - (B) as applicable, the Contractor's out-of-pocket costs incurred as a direct result of termination of this Project Agreement (excluding any breakage fees and overhead and profit of the Contractor);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (iv) 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 this 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 this 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 Scope, the Project and this 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 Scope, the Project and this Project Agreement) to the City and, at no additional cost to Project Co, give the City reasonable assistance in prosecuting such claims;

- (v) 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 this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this 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
- (vi) amounts which the City is entitled to set off pursuant to Section 34.13(a)(i) of this Project Agreement, provided that the City shall only set off amounts which are due to the City by Project Co pursuant to the terms of this Project Agreement if and to the extent the Prohibited Acts Termination Sum exceeds the Senior Debt Amount.
- (c) To the extent that such assets and rights referred to in Section 5.1(b)(v) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Prohibited Acts Termination Sum, assign such assets and rights to the City.
- (d) The City shall pay the Prohibited Acts Termination Sum in accordance with Section 8 of this Schedule 23.

6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING

6.1 Consequences

- (a) If the City terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 7.3 of this Project Agreement or Schedule 28 – Refinancing or the Lender assigns, transfers or otherwise disposes of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents in breach of the Lenders’ Direct Agreement, the City shall pay to Project Co a termination sum equivalent to, and calculated in accordance with Sections 5.1(b)(i), (ii), (iii), (iv) and (v) of this Schedule 23, less amounts which the City is entitled to set off pursuant to Section 34.13(a)(i) of this Project Agreement.
- (b) The City shall pay such termination sum in accordance with Section 8 of this Schedule 23.

7. CONSEQUENCES OF TERMINATION BY PROJECT CO FOR RELIEF EVENT

7.1 Consequences

- (a) If Project Co terminates this Project Agreement pursuant to Section 47.1 of this Project Agreement, the City shall pay to Project Co a termination sum equivalent to the greater of (i) an amount calculated and payable in accordance with, the Prohibited Acts Termination Sum; and (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 23.
- (b) The City shall pay such termination sum in accordance with Section 8.1 or 8.3 of this Schedule 23, 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, 5, 6 or 7 of this Schedule 23, 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 pay to Project Co:
- (i) the relevant termination sum within 60 days after the Invoice Date; and
 - (ii) The City shall indemnify Project Co as provided in Section 56.2(c) of this 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, 5, 6 or 7 of this Schedule 23, 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 56.1(e) of this 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 of this Schedule 23, 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) of this Schedule 23, referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with Schedule 27 – 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) of this Schedule 23,

and the City shall indemnify Project Co as provided in Section 56.2(c) of this 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:

- (i) 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 Sections 8.2(a)(i) and (ii) of this Schedule 23 (and for clarity, on such portions of the Adjusted Highest Qualifying Tender Price in the circumstance described in paragraph (ii) above); and
 - (ii) 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 this 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 of this Schedule 23, 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 of this Schedule 23, together with interest on such amount calculated in accordance with Section 8.1(b)(ii) of this Schedule 23.
- (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 56.1(e) of this 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 23 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 of this Schedule 23 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

8.6 Outstanding Debt Amounts

- (a) The City shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior 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 Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge the City's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.