

SCHEDULE 40
HIGHWAY WORK

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) This Schedule 40 is comprised of this schedule and the following documents, all of which are hereby incorporated by reference into and form part of the Project Agreement:

<u>Schedule No.</u>	<u>Description</u>
Annex A	List of Highway Drawings and Highway Specifications
Annex B	Highway Commissioning Program
Annex C	Risk Assessment Guidelines
Annex D	List of Project Co Parties
Annex E	[Reserved]
Annex F	Legal Description of Highway Site
Annex G	Highway Supplementary Conditions - Part A – MTO General Conditions - Part B – Addenda - Part C – Special Conditions
Annex H	Highway Final Completion Notice

- (b) The intent of the Contract Documents is to include the labour, Products and services necessary for the performance of the Highway Work by Project Co in accordance with these documents.
- (c) Neither the organization of the Highway Specifications into divisions, sections and parts, nor the arrangement of Highway Drawings shall control Project Co in dividing the Highway Work among the Project Co Parties or in establishing the extent of the Highway Work 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 Schedule 40 and the other Contract Documents, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently, unless otherwise expressly provided therein or herein:
- (i) the provisions of amendments in writing to this Schedule 40 signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Schedule 40 and the other Contract Documents 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 Schedule 40;
 - (iv) the Annexes to this Schedule 40, excluding Annex G, in the order in which they are listed in Section 1.1(a);
 - (v) the preamble to Annex G, including paragraphs 1 to 29.
 - (vi) the Addenda;
 - (vii) Special Provisions set out in Part C of Annex G to this Schedule 40;
 - (viii) Highway Drawings;
 - (ix) Standard Specifications listed in Part C of Annex G to this Schedule 40;
 - (x) Standard Drawings listed in Part C of Annex G to this Schedule 40;
 - (xi) Part A of Annex G to this Schedule 40;
 - (xii) Highway Shop Drawings;
 - (xiii) drawings of larger scale shall govern over those of smaller scale of the same date;
 - (xiv) dimensions shown on drawings shall govern over dimensions scaled from drawings;
 - (xv) later dated documents shall govern over earlier documents of the same type;
 - (xvi) if an item is shown on one document, it shall be deemed to be part of the Highway Work;
 - (xvii) written descriptions and words shall govern over graphic depictions; and
 - (xviii) detailed drawings shall govern over general drawings.
- (b) In the event of any conflict in the contents of Standards (as such term is defined in Part A of Annex G to this Schedule 40), the following order of precedence shall govern:
- (i) Ontario Provincial Standard Specifications and Drawings; and
 - (ii) other Standards referenced by OPSSs and OPSDs (e.g. CSA, CGSB, ASTM, and ANSI) (all abbreviations as defined in Part A of Annex G to this Schedule 40).

- (c) 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 Highway Work, the provision that applies to the specific part of the Highway Work shall govern for that specific part of the Highway Work.
- (d) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or City, upon discovery of same, shall immediately give notice to the Consultant. The Consultant 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.
- (e) City and Project Co shall comply with the determination of the Consultant pursuant to this Section 1.2 unless City or Project Co disputes the decision of the Consultant, in which event such dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

2. [RESERVED]

3. [RESERVED]

4. [RESERVED]

5. [RESERVED]

6. [RESERVED]

7. [RESERVED]

8. CONSULTANT AND KEY PERSONNEL

8.1 Authority of the Consultant

- (a) The Consultant will have authority to act on behalf of City only to the extent provided in the Contract Documents, unless otherwise modified by written agreement as provided in Section 8.1(b).
- (b) The duties, responsibilities, and limitations of authority of the Consultant as set forth in the Contract Documents shall be modified or extended only with the written consent of City, Project Co and the Consultant.
- (c) If the Consultant's employment is terminated, City shall immediately appoint or reappoint a Consultant whose status shall, upon notification to Project Co of such appointment or reappointment, be that of the former Consultant.

8.2 Role of the Consultant

- (a) The Consultant will provide administration of this Schedule 40 as described in the Contract Documents during construction until the end of the Highway Warranty,

and subject to Section 8.1 and with City's concurrence, from time to time until the completion of any additional warranties as provided for in the requirements under this Schedule 40 and/or Annex G to this Schedule 40.

- (b) The Consultant will visit the Highway Site at intervals appropriate to the progress of construction to become familiar with the progress and quality of the Highway Work and to determine if the Highway Work is proceeding in general conformity with the Contract Documents.
- (c) If City and the Consultant agree, the Consultant will provide at the Highway Site, one or more project representatives to assist in carrying out the Consultant's responsibilities. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in writing to Project Co.
- (d) The Consultant will provide to Project Co a complete set of the issued for construction Highway Drawings and Highway Specifications under the Contract Documents incorporating all Addenda issued by the MTO from June 11, 2012 to the Submission Date as soon as reasonably practical following such date of execution. The Consultant shall review the progress of the Highway Work and the general conformance of the Highway Work to the requirements of the Contract Documents.
- (e) The Consultant will not be responsible for and will not have control, charge, or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the Highway Work in accordance with Applicable Law or general construction practice. The Consultant will not be responsible for Project Co's failure to carry out the Highway Work in accordance with the Contract Documents. The Consultant will not have control over, charge of, or be responsible for the acts or omissions of Project Co or any Project Co Party or any other persons performing portions of the Highway Work.
- (f) The Consultant will be, in the first instance, the interpreter of the requirements of the Contract Documents and shall make findings as to the performance thereunder by both Parties. When making any interpretations or findings or performing any other functions or exercising any right or performing any obligation under the Contract Documents, the Consultant will act reasonably and in good faith and in accordance with generally accepted professional standards and will not show partiality to either City or Project Co. Any dispute between City and Project Co as to any decision, determination, direction, interpretation or finding of the Consultant or any other action taken by the Consultant pursuant to or in connection with the Contract Documents shall be resolved in accordance with the provisions of Schedule 27 – Dispute Resolution Procedure.
- (g) Claims, disputes, and other matters in question relating to the performance of the Highway Work or the interpretation of the Contract Documents, shall be referred initially to the Consultant by notice in writing given to the Consultant and to the

other party for the Consultant's interpretation and finding which will be given by notice in writing to the parties within a reasonable time.

- (h) The Consultant will have authority to reject Highway Work which does not conform to the requirements of the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant will have authority to require inspection or testing of Highway Work in accordance with Section 21.3 of the Project Agreement, whether or not such Highway Work is fabricated, installed, or completed. However, neither the authority of the Consultant to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Consultant to Project Co, any Project Co Party, or other persons performing any part of the Highway Work.
- (i) When a request for information is submitted by Project Co in accordance with Section 11.2(a)(i), the Consultant will endeavour to provide a response to Project Co as soon as practical, taking into account the impact of the request for information on the critical path. If the request for information relates to an item on the critical path or is reasonably likely to affect an item on the critical path, the Consultant shall respond within 5 Business Days or such longer period of time mutually agreed to by the Consultant and Project Co. If the request for information does not relate to an item on the critical path and is not reasonably likely to affect an item on the critical path, the Consultant and Project Co shall establish a mutually agreed response time that is consistent with the Highway Construction Schedule.
- (j) The Consultant will review and take appropriate action upon Project Co's submittals such as Highway Shop Drawings, Product data and samples, as provided in the Contract Documents.
- (k) The Consultant will prepare Variation Enquiries, Variation Confirmations and Variation Directives as provided in Schedule 22 - Variation Procedure.
- (l) The Consultant will:
 - (i) conduct reviews of the Highway Work to determine the Highway Substantial Completion Date, as provided in Section 16.1, and make determinations as required in respect of the Highway Commissioning, as contemplated in Annex B – Highway Commissioning Program; and
 - (ii) conduct reviews of the Coventry Bridge Work to determine when the Coventry Bridge Work has been completed in accordance with the Project Agreement including the Civic Works Specifications in respect of the Coventry Bridge Work, at which point the Consultant will certify that the Coventry Bridge Work is complete as part of the Substantial Completion of the Civic Works.

- (m) All certificates issued by the Consultant shall be to the best of the Consultant's knowledge, information and belief. By issuing any certificate, the Consultant does not guarantee that the Highway Work is correct or complete.
- (n) The Consultant will receive and review written warranties and related documents required by this Schedule 40 and provided by Project Co and will forward such warranties and documents to City for City's acceptance.
- (o) Without limiting the generality of the responsibilities of the Consultant in accordance with this Section 8.2, the Consultant shall be responsible for reviewing and making a finding on Highway Design Issues and issuing all final documentation in accordance with Section 11.18.
- (p) **[Reserved]**.
- (q) City has retained the City's Project Manager to assist City in the overall implementation of the Highway Work. The City's Project Manager shall provide services and interface with Project Co and the Consultant in relation to coordination of the Highway Work for existing operations, schedule overview, and communicating decisions and directions of City. City may, upon notification to Project Co, appoint a new City's Project Manager whose status shall be that of the former City's Project Manager.
- (r) **[Reserved]**.
- (s) Notwithstanding the foregoing or anything to the contrary in this Schedule 40 or the Contract Documents, the Consultant will not be responsible for the administration or interpretation of those aspects of this Schedule 40 that are not related or do not pertain to the construction, installation, testing, Highway Commissioning and completion of the Highway Work, and other like activities, and for greater certainty, will not have any responsibility or obligation for any matter related to the financing with the Lenders.

8.3 Supervisors

- (a) Project Co shall employ competent supervisors and necessary assistants who shall be in attendance at the Highway Site while work is being performed, and shall specifically include a competent Construction Manager, Quality Manager, Health and Safety Officer, Traffic Manager, Traffic Control Supervisor, Environmental Coordinator. Project Co acknowledges that these positions are Key Individuals. Project Co's supervisors shall, subject to Section 10.4 of the Project Agreement, devote their full time during working hours to the Project and remain at the Highway Site until the Substantial Completion of the Highway Work is achieved and thereafter, such positions shall, subject to the provisions of Section 10.4 of the Project Agreement, devote sufficient time and effort to the Project as necessary until the final certificate of payment has been issued by the Consultant and all Highway Minor Deficiencies have been rectified. Project Co shall include in its staff separate qualified environmental contractor and traffic management

coordinators who shall be responsible for (i) coordinating the general, quality, health and safety, environmental and traffic management Highway Shop Drawings submitted by the Subcontractors and Suppliers for various trades or divisions of the Highway Work; (ii) checking for any conflicts or interferences of the Highway Work of one division or trade with another; (iii) checking for completeness of the Highway Shop Drawings; and (iv) providing direction on any changes that may be required for compliance with the Contract Documents for submission to the Consultant and review of the Highway Shop Drawings. The Quality Manager and Traffic Manager shall be active participants in the Highway Commissioning and shall work closely with the Highway Commissioning Agents in accordance with Annex B – Highway Commissioning Program.

- (b) The supervisor and project manager appointed by Project Co and identified in Schedule 9– Key Individuals of the Project Agreement shall represent Project Co at the Highway Site and shall have full authority to act on written instructions given by the Consultant, City and/or the City’s Project Manager. Instructions given to the supervisor or the project manager shall be deemed to have been given to Project Co and both the supervisor and any project manager shall have full authority to act on behalf of Project Co and bind Project Co in matters related to this Schedule 40.

9. LICENCE AND TITLE

9.1 Licence to Highway Site

- (a) Effective from the date of Financial Close and subject to this Schedule 40, City hereby grants to Project Co and all Project Co Parties such non-exclusive licence rights of use and access to, on and over the Highway Site and Highway as are required by Project Co to allow Project Co to perform the Highway Work or Project Co’s obligations in respect of the Highway Warranty.
- (b) None of the rights granted pursuant to this Section 9.1 shall extend beyond the boundaries of the Highway Site, or to any lands other than the Highway Site, other than easements and similar interests of City which benefit the Highway Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Highway Work.
- (c) Notwithstanding Section 9.1(a), in the event that the MTO, acting reasonably, determines that the performance of the Highway Work would pose a risk to the safety and security of the drivers, passengers and pedestrians using the Existing Highway Infrastructure or a conflict with certain Additional Works, or any contractor hired by the MTO that is working on the Existing Highway Infrastructure, the MTO may direct the City to limit or suspend Project Co’s licence to all or part of the Highway Site and the licence shall be so limited or suspended until such time as such measures required to address such risks or conflicts have been taken by the MTO or the City and the City provides Project Co with notice of same.

- (d) The licence provided in this Section 9.1 shall automatically terminate on the expiry of the Highway Warranty or upon the earlier termination of this Project Agreement in accordance with its terms.

9.2 Non-Exclusive Licence of Highway Site

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that City and any person authorized by City may occupy and possess the Highway Site and Highway. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, compromise Highway User care and safety and, except as permitted under the Project Agreement, disrupt the ongoing operation of the Highway.
- (b) Without limiting Section 9.2(a), Project Co acknowledges that City may, from time to time, use or develop (including by way of subdivision), or permit the use or development of, portions of the Highway Site other than those portions of the Highway Site contained within the footprint of the Highway and those other portions of the Highway Site necessary for the performance of the Highway Work. To the extent that such use or development materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Highway Work, such use or development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation Confirmation.
- (c) Project Co shall use commercially reasonable efforts to keep the Highway open for public use at all times from Financial Close until the Highway Final Completion Date, except for lane closures or diversions of traffic flow by Project Co in accordance with the provisions of the Highway Traffic Control Plan and, except as otherwise expressly provided in this Project Agreement, Project Co shall not have any claim whatsoever against the City, any City Person, Emergency Service Provider or any other Governmental Authority for or in respect of any lane closure or diversion, including any lane closure or diversion referred to in this Section 9.2(c) or 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 Highway Site or the Highway at any time.

9.3 Naming and Signage

- (a) Project Co acknowledges that City reserves and retains (i) all rights to designate the name for the Highway and any part of the Highway; (ii) all rights to signage in relation to the Highway Site and the Highway; and (iii) all rights, trademarks, naming or branding regarding the Highway or any part of the Highway. It is agreed, however, that with the prior written consent of City, not to be unreasonably withheld or delayed and which may take into consideration any applicable governmental guidelines including the guidelines set out in Schedule 18 – Communications and Public Consultation Protocol to the Project

Agreement, Project Co, the Project Co Parties and the Lenders' Agent may, for the period prior to Substantial Completion of the Highway Work, erect and maintain signage at or on the Highway Site (which may include such parties' logos and trade names) identifying their respective roles in connection with the Highway Work, in a number and location and having a size and quality previously approved by City.

9.4 No Interest in Land or Highway

- (a) Subject to Section 9.6, Project Co acknowledges and agrees that it acquires no estate, right, title or ownership interest in the Highway Site or the Highway or any other interest in land pursuant to the Project Agreement or otherwise, provided, that solely for the purposes of the obligation of Project Co to comply with the CLA, the licence granted to Project Co of use and access to, on and over the Highway Site and the Highway pursuant to Section 9.1 shall, for the duration of the performance of the Highway Work and Project Co's obligations in respect of the Highway Warranty, be an interest in the premises, and Project Co acknowledges and agrees that no disposition of an interest in the Highway Site or Highway arises as a result of the aforesaid grant.

9.5 Non-Disturbance Agreement

- (a) If City or HMQ mortgages, charges or otherwise encumbers the Highway Site, City shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement executed by the mortgagee of the Highway Site, permitting Project Co and Lenders' Agent to access and use the Highway Site under the licence granted pursuant to Section 9.1(a) and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee or any person claiming by or through the mortgagee. This Section 9.5 shall not apply in respect of any portion of the Highway Site or Highway used or developed pursuant to Section 9.2(b) if neither the licence granted pursuant to Section 9.1(a) nor the Highway Work pertain to such portion of the Highway Site.

9.6 King's Highway/Title

- (a) Project Co acknowledges that the Highway will be a King's Highway under all interpretations and for all purposes of Applicable Law with ownership vested in HMQ (except to the extent that any part of the Highway is a municipal road or structure with ownership vested in the applicable municipality or other relevant authority). For greater certainty, no provision of the Project Agreement, including this Schedule 40, shall confer upon Project Co any statutory or common law rights or privileges of HMQ with respect to a King's Highway (or of a municipality or other relevant authority with respect to a municipal road or structure) other than the licence rights and other rights specifically set out in this Schedule 40.

- (b) Title to each item and part of the Highway, 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 HMQ (or as HMQ may direct) upon the receipt of such item on the Highway Site, 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 Highway or are to be affixed or attached to a phase of the Highway prior to the Substantial Completion of the Highway Work shall pass to HMQ (or as HMQ may direct) at the time that such items are included in the Highway or affixed or attached to the Highway.

10. [RESERVED]

11. PROJECT CO RESPONSIBILITIES AND CONSTRUCTION OBLIGATIONS HIGHWAY WORK

11.1 General Responsibilities, Standards and Highway Contract Time

- (a) Project Co shall perform and complete the Highway Work:
 - (i) so as to satisfy and in strict accordance with the Contract Documents;
 - (ii) in accordance with the Highway Construction Schedule and in this regard, shall commence the Highway Work by February 25, 2013 and, subject to adjustment to the Highway Contract Time, as provided for in the Contract Documents: (A) achieve Substantial Completion of the Highway Work by the Highway Scheduled Substantial Completion Date; and (B) achieve Highway Final Completion by the Highway Scheduled Final Completion Date;
 - (iii) in compliance with Applicable Law, including giving all required notices;
 - (iv)
 - (A) in compliance with all Permits, Licences and Approvals and so as to preserve the existence and continued effectiveness of any such Permits, Licences and Approvals;
 - (B) without derogating from Project Co's obligations under the remainder of this Section 11.1(a), Project Co shall not commence the Highway Work until all necessary Permits, Licences and Approvals required to commence the Highway Work have been obtained and it has notified the City of such in writing at least 15 Business Days prior to commencing the Highway Work;
 - (v) in accordance with Good Industry Practice (Highway);

- (vi) in a timely and professional manner;
 - (vii) with due regard to the health and safety of persons and property;
 - (viii) subject to the other provisions of this Schedule 40, in a manner which will not impair the ability of and which will enable City and the City Parties to comply with Applicable Law;
 - (ix) subject to the other provisions of this Schedule 40 and to the extent reasonably practicable, in a manner which will not impair the ongoing operation of the Existing Highway Infrastructure; and
 - (x) in accordance with all other terms of this Project Agreement and the other Contract Documents.
- (b) Project Co shall furnish necessary certificates as evidence that the Highway Work installed conforms with Applicable Law, including all certificates necessary for the Consultant to certify as required to obtain approval for City's or any Highway User's use of the Highway. These certificates are to be final certificates giving complete clearance for the portions of the Highway Work for which they are obtained.

11.2 General Construction Obligations

- (a) Without limiting Section 11.1, Project Co shall:
- (i) have complete control of the Highway Work and shall effectively direct and supervise the Highway Work so as to ensure conformance with the Contract Documents, including the phasing or sequencing requirements for the Highway Work set out in the Contract Documents. With respect to the phasing and sequencing requirements set out in the Highway Drawings and Highway Specifications, the City shall approve any changes thereto proposed by Project Co provided, however, that no changes shall be made to the MTO Base Staging Requirements. During the progress of the Highway Work, subject to Section 8.2(i), Project Co shall endeavour to submit any request for information to the Consultant in a timely manner having regard to the Highway Construction Schedule, and to identify in the request for information the timeframe within which a Supplemental Instruction is needed to ensure there is no impact on the Highway Construction Schedule, including whether and how the information requested affects the critical path. Project Co shall develop and implement protocols in accordance with the Highway Specifications for the phasing or sequencing of the Highway Work as set out in the Contract Documents, including the coordination of the work of Other Contractors with the Highway Work. Without limiting the generality of the foregoing, Project Co is responsible for the intermeshing of the various parts and systems comprising any portions of the Highway Work so that no part shall be left in an unfinished or incomplete condition owing to any disagreement

between the Project Co Parties or between any of them and Project Co as to where the Highway Work of one begins and ends in relation to the Highway Work of the other;

- (ii) subject to the MTO Base Staging Requirements, be solely responsible for all construction means, methods, techniques, sequences and procedures used to undertake the Highway Work and for coordinating the various parts of the Highway Work under this Project Agreement and shall coordinate the Highway Work so as to not interfere, interrupt, obstruct, delay or otherwise affect the work of others;
- (iii) prior to commencing applicable procurement and construction activities, verify, at the Highway Site, all measurements and levels necessary for proper and complete fabrication, assembly and installation of the relevant Highway Work, and shall further carefully compare such field measurements and conditions with the requirements of the Contract Documents. Where dimensions are not included or exact locations are not apparent, Project Co shall immediately notify the Consultant in writing and obtain written instructions from the Consultant before proceeding with any part of the Highway Work affected thereby;
- (iv) ensure that no work other than the Highway Work under this Schedule 40 is constructed on the Highway Site by Project Co, any Project Co Party or any person for whom Project Co is responsible at law, except as otherwise required to perform the Design and Construction Works in accordance with the terms of the Project Agreement;
- (v) protect the Highway Work from all of the elements, casualty and damage in accordance with and subject to the Contract Documents;
- (vi) in respect of plant, equipment, Products and materials incorporated in the Highway Work, use plant, equipment, Products and materials that:
 - (A) are of a kind that are consistent with the Contract Documents;
 - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law, the Contract Documents and Good Industry Practice (Highway); and
 - (C) where they differ from the Contract Documents, have been substituted with City's prior written consent;
- (vii) provide all the labour, Products, tools, construction machinery, equipment, water, heat, light, power, transportation and other facilities and services required for the performance and completion of the Highway Work and carry out, perform, observe, fulfil and abide by all the covenants, agreements, stipulations, provisions and conditions mentioned and

contained in the Contract Documents on the part of Project Co to be carried out, performed, observed and fulfilled;

- (viii) exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar public highway projects, in a timely, good and workmanlike manner, it being acknowledged by Project Co that throughout this Schedule 40, Project Co's obligations, duties and responsibilities shall be interpreted in accordance with this standard and any default or alleged default by Project Co in the performance of its obligations, duties and responsibilities shall similarly be interpreted in accordance with this standard;
- (ix) exercise the same standard of due care and diligence as set out in Section 11.2(a)(viii) in respect of any Products, personnel, or procedures which it may recommend to City;
- (x) comply with all requirements of City set forth in the Contract Documents;
- (xi) comply with all rules and directives issued by City regarding the continued operations of the Existing Highway Infrastructure so as not to disrupt the operations of City, and except for any requirements of City described in Section 11.2(a)(x), the cost, if any, and the additional time, if any, required to comply with any such rules and directives issued by City shall be adjusted and compensated for by way of a Variation Confirmation or Variation Directive, as applicable as provided in Schedule 22 – Variation Procedure; and
- (xii) use the same project management software system(s) and/or online collaboration system(s) (including software and system(s) for project management, change management, request for information control, document management and other communications) as specified under the Project Agreement in respect of the Design and Construction Works. Project Co shall be responsible for its costs and expenses with respect to the implementation and use of such system(s).

11.3 Liability Unaffected

- (a) Project Co shall not be relieved of any liability or obligation under this Schedule 40 by the retainer or 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 Highway Work, to comply with the obligations of Project Co to City in the same manner and to the same extent as Project Co.
- (b) No inspection, review, comment, approval, verification, confirmation, certification, acknowledgement or audit pursuant to the provisions of this Schedule 40 by City, the City's Project Manager, the Consultant, or anyone on

their behalf, nor any failure of any of them to do so, shall relieve Project Co from performing or fulfilling any of its obligations under this Schedule 40 or be construed as an acceptance of the Highway Work or any part thereof.

11.4 Project Co Delay

- (a) It is agreed that one of the reasons Project Co was selected to perform the Highway Work is Project Co's covenant that it will achieve Substantial Completion of the Highway Work and Highway Final Completion by the dates set out in Section 11.1(a)(ii) of this Schedule 40, and Project Co acknowledges that it is critical to City that Substantial Completion of the Highway Work and Highway Final Completion be achieved by the prescribed dates set out in Section 11.1(a)(ii), and that time is of the essence of this Project Agreement.

11.5 [Reserved]

11.6 Safety

- (a) From Financial Close until the Highway Substantial Completion Date, Project Co shall:
- (i) keep the Highway Site, the Highway Work and the Highway in a safe and orderly state, as appropriate in accordance with Good Industry Practice (Highway), to avoid danger to persons on the Highway Site, in the Highway and in the immediate vicinity of the Highway Site; and
 - (ii) take such measures as are reasonable in accordance with Good Industry Practice (Highway) to prevent access to the Highway Site and the Highway of any persons or creatures not entitled to be there.
- (b) Without limitation, Project Co acknowledges that the safety and security of the users of the Existing Highway Infrastructure and the safety of the drivers, passengers and pedestrians in the Existing Highway Infrastructure is paramount. If any of the employees of Project Co, or any Project Co Party is determined by City to be a concern for the safety and security of the Existing Highway Infrastructure or for the safety and security of the users or employees in the Existing Highway Infrastructure, in addition to its rights under Article 19, City may require that Project Co replace such employee or restrict access to the Highway Site to that employee and Project Co shall find or cause the Project Co Parties to find substitute employees to proceed with the Highway Work so as not to jeopardize security or safety or cause delay to the progress of the Highway Work contrary to the Highway Construction Schedule.
- (c) Project Co shall perform all of the obligations of the 'constructor', within the meaning of OHSA, and shall be solely responsible for construction safety at the Highway Site and for compliance with the rules, regulations and practices required by OHSA.

- (d) Prior to commencement of the Highway Work, Project Co shall submit to City:
 - (i) documentation of a valid WSIB clearance certificate and confirmation of Project Co's or the Construction Contractor's WSIB CAD-7 performance rating;
 - (ii) documentation of Project Co's insurance coverage;
 - (iii) documentation of Project Co's in-house safety-related programs; and
 - (iv) a copy of the Notice of Project filed with the Ministry of Labour.
- (e) Project Co hereby represents and warrants to City that appropriate health and safety instruction and training have been provided to the Project Co Parties (to the extent same have access to the Highway Site), before the Highway Work of such Project Co Party is commenced and agrees to provide to City, if requested, proof of such instruction and training.
- (f) Project Co shall tour the appropriate area to familiarize itself with the Highway Site prior to commencement of the Highway Work.
- (g) Project Co shall perform the Highway Work in accordance with its corporate safety-related programs and Applicable Law. Project Co shall have a competent supervisor on site as required under OHSA at all times.
- (h) Prior to commencing the Highway Work and prior to receiving payment on the Highway Milestone Payment Date and in respect of the final certificate for payment pursuant to Section 16.1(o), and for each application for payment, Project Co shall provide a clearance certificate, obtained by the applicable Project Co Parties from the WSIB, indicating compliance with workers' compensation legislation, including payments due thereunder. At any time during the term of this Schedule 40, when requested by City, Project Co shall provide such evidence of compliance by Project Co and/or the applicable Project Co Parties.

11.7 [Reserved]

11.8 Subcontractors and Suppliers

- (a) Project Co shall preserve and protect the rights of the parties under this Schedule 40 with respect to Highway Work to be performed under Subcontract, and shall:
 - (i) enter into Subcontracts or written agreements with Project Co Parties to require them to perform their Highway Work as provided in the Contract Documents and without limiting the generality of the foregoing, shall advise the Project Co Parties of the transfer to Project Co of the design coordination, design errors and omissions and design completion risk as set out in Section 11.17;

- (ii) incorporate the relevant terms and conditions of the Contract Documents into all contracts or written agreements with Project Co Parties, including those specified in Article 35; and
 - (iii) be as fully responsible to City for acts and omissions of the Project Co Parties as for acts and omissions of persons directly employed by Project Co.
- (b) Attached as Annex D – List of Project Co Parties is a list of all Project Co Parties which Project Co has engaged or caused to be engaged for the performance of the Highway Work as of the date of execution of this Schedule 40. Project Co agrees to update such list from time to time as additional Project Co Parties are engaged. Subject to Section 59.3 of the Project Agreement, any of these named Project Co Parties listed by Project Co may be changed by Project Co upon prior notice to (but without the approval of) the Consultant, provided however, that if the Consultant reasonably objects to any change to a general contractor, environmental contractor or traffic management coordinator Subcontractor that is a Project Co Party, then Project Co shall select an alternative replacement general contractor, environmental contractor or traffic management coordinator Subcontractor to which the Consultant does not reasonably object.
- (c) Project Co shall not be required to employ as a Project Co Party, a person to whom Project Co may reasonably object, provided City may require Project Co to use particular persons as specified in the Contract Documents for specific Highway Infrastructure in respect of the Highway to ensure City does not lose the benefit of any warranty in respect to such Highway Infrastructure. City shall have the right to assign to Project Co the work of Other Contractors in relation to the Highway and, if such assignment results in an increase in Project Co's cost or a delay in the Highway Construction Schedule, the same shall be addressed or compensated for in accordance with the provisions of Schedule 22 – Variation Procedure. Notwithstanding the foregoing provisions of this Section 11.8(c), Project Co shall use the Project Co Parties that have been identified in the Contract Documents for specific portions of the Highway Work and with respect to such Project Co Parties there shall be no increase in Project Co's cost or allowance for any delay in the Highway Construction Schedule.
- (d) **[Reserved].**
- (e) **[Reserved].**
- (f) Notwithstanding Section 1.2(c), in the case of any item of the Highway Work being specified under the heading of more than one trade section, Project Co shall decide which of these trades is to perform the Highway Work.

11.9 Labour and Products

- (a) Unless otherwise stipulated elsewhere in the Contract Documents or in other documents made available to Project Co by City, Project Co shall, as appropriate,

provide separate metering for all services and facilities necessary for the performance of the Highway Work. Project Co shall arrange for delivery of materials and equipment to the Project in accordance with the Highway Construction Schedule.

- (b) Products shall be free from faults, improper workmanship and defects and in conformance with the Contract Documents. Products which are not specified shall be of a quality best suited to the purpose required and their use shall be subject to the approval of the Consultant.
- (c) Project Co shall (i) maintain good order and discipline among all personnel engaged in respect of the Highway Work and shall promote and maintain a good relationship with all such personnel; (ii) not employ any persons to perform the Highway Work who is/are incompatible with other labour employed by Project Co in connection with the Highway Work; and (iii) act promptly on all problems of labour relations including grievances and jurisdictional disputes. Project Co shall not employ on the Highway Work anyone not skilled in the task assigned to him and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances and other activities that will or may constitute a danger to life, health or property.
- (d) At City's instruction, Project Co shall promptly remove from the Highway Site any employee who represents a threat to the safety or progress of the Project or persons on the Project or whose conduct may be considered as harassment in the workplace of any person who is an employee of City under the *Human Rights Code* (Ontario).
- (e) Project Co is responsible for the safe on-site storage of Products and their protection (including Products supplied by City and Other Contractors) in such a way so as to avoid dangerous conditions or contamination to the Products or other persons or property, and in locations at the Highway Site satisfactory to City.
- (f) Title to the Products shall pass to HMQ (or as HMQ may direct) upon payment therefor or upon incorporation into the Project, whichever occurs first. For greater certainty, title to Products delivered, but not installed, shall pass to HMQ when paid for. Project Co shall promptly execute and deliver to City, from time to time as City may require, any further documentation required to identify, evidence, perfect or protect HMQ's interest in the Products, including any registrations pursuant to the *Personal Property Security Act* (Ontario). Subject to Section 11.19(d), notwithstanding the foregoing, Project Co shall continue to bear the risk of loss or damage with respect to the Highway Work until the date of issuance by the Consultant of its certificate under Section 16.2(e) stating the Highway Substantial Completion Date.

11.10 Documents at the Highway Site

- (a) Project Co shall keep one copy of the current digital files of the Contract Documents, Highway Construction Schedule, submittals, reports, Supplementary Instructions, Variation Confirmations, Variation Enquiries, Variation Directives, Highway Design Issue resolution documents, partnering documents, records of meetings and all other documents necessary for the administration of the Project at the Highway Site, all in good order and available to City and the Consultant. Project Co shall keep a daily log available to City and the Consultant at all times.
- (b) Project Co shall, where practical, keep one copy of current standards and manufacturers' literature specified in the Contract Documents at the Highway Site in good order and available to the Consultant and its representatives for the duration of the Highway Work.

11.11 Highway Shop Drawings

- (a) Project Co shall provide Highway Shop Drawings as described in the Contract Documents or as the Consultant may reasonably request.
- (b) Project Co shall review all Highway Shop Drawings prior to submission to the Consultant. Project Co represents by this review that:
 - (i) Project Co has determined and verified all field measurements, field construction conditions and Product requirements, or will do so; and
 - (ii) Project Co has checked and coordinated each shop drawing with the requirements of the Highway Work and of the Contract Documents.

Project Co shall confirm this review of each shop drawing by stamp, date and signature of the person responsible. At the time of submission, Project Co shall notify the Consultant in writing of any deviations in the Highway Shop Drawings from the requirements of the Contract Documents.

- (c) At the commencement of the Highway Work, Project Co shall prepare, for the review and acceptance of the Consultant, a schedule (the "**Highway Shop Drawing Schedule**") of the dates for submission and return (which, in no event, will be less than 10 Business Days following submission and 5 Business Days following any re-submission or such shorter period as may be mutually agreed between Project Co and the Consultant) of Highway Shop Drawings to ensure there is no impact on the Highway Construction Schedule, including, on a reasonable basis, in respect of the Additional Works that apply to the Highway Site, as set out in the Contract Documents or as City has otherwise advised Project Co. The Highway Shop Drawing Schedule shall provide for the submission of Highway Shop Drawings in an orderly sequence and sufficiently in advance to allow for the Consultant's proper review and so as to cause no delay to the Highway Work or the work of Other Contractors which has been incorporated in the Highway Construction Schedule. Project Co shall submit Highway Shop

Drawings to the Consultant and the Consultant shall review and return Highway Shop Drawings in accordance with the Highway Shop Drawing Schedule. If, at any time, Project Co submits an unusually large number of Highway Shop Drawings not contemplated by the Highway Shop Drawing Schedule, such that the Consultant cannot process these drawings within the time permitted in the Highway Shop Drawing Schedule, the Consultant will, within 5 Business Days of receipt of such Highway Shop Drawings, provide Project Co with an estimate of the time necessary for processing such Highway Shop Drawings. Project Co shall periodically re-submit the Highway Shop Drawing Schedule to correspond to changes in the Highway Construction Schedule for the review and acceptance of the Consultant. Shop drawings which require approval of a Governmental Authority having jurisdiction shall be submitted first to the Consultant for its approval in accordance with the approval process set out in this Section 11.11(c) prior to submission by Project Co to such authority. Should the Consultant's review of such Highway Shop Drawings require significant changes to such Highway Shop Drawings, Project Co shall revise same and resubmit to the Consultant prior to submitting to the Governmental Authority having jurisdiction in accordance with the Highway Shop Drawing Schedule.

- (d) Project Co shall submit Highway Shop Drawings in the form specified or as the Consultant may direct. The Consultant will review and return Highway Shop Drawings in accordance with the provisions of Section 11.11(c). The Consultant's review is for conformity to the design concept and for general arrangement only. The Consultant's review shall not relieve Project Co of responsibility for errors or omissions in the Highway Shop Drawings or for meeting all requirements of the Contract Documents.
- (e) Upon the Consultant's request, Project Co shall revise and resubmit Highway Shop Drawings which the Consultant rejects as inconsistent with the Contract Documents unless otherwise directed by the Consultant. Project Co shall notify the Consultant in writing of any revisions to the re-submission other than those requested by the Consultant.
- (f) Only Highway Shop Drawings indicated as 'Reviewed' or 'Reviewed as Noted', or words of similar intent, and bearing the Consultant's review date and initials, shall be used at the Highway Site or for the manufacture or fabrication of Products.
- (g) The review of Highway Shop Drawings by the Consultant does not authorize a change in the Highway Milestone Payment and the Highway Final Payment or Highway Contract Time.
- (h) Project Co shall prepare and maintain record drawings which shall consist of the Highway Shop Drawings and Highway Specifications revised by Project Co during the Highway Work, showing changes to the Highway Shop Drawings and Highway Specifications, which record drawings shall be kept current by Project Co and made available to the Consultant for review at its request.

- (i) All required actions by Project Co under this Section 11.11 shall be taken promptly so as not to cause any delay in the Highway Construction Schedule.

11.12 Use of the Highway Work

- (a) Project Co shall confine construction machinery and equipment, storage of Products, and operations of employees to limits indicated by Applicable Law or the Contract Documents and shall not unreasonably encumber the Highway Work with Products.
- (b) Project Co shall not load or permit to be loaded any part of the Highway Work with a weight or force that will endanger the safety of the Highway Work.
- (c) City shall have the right to enter and occupy the Highway Site in whole or in part for the purpose of placing equipment or for other uses, including the intended use of City before Substantial Completion of the Highway Work, as provided for in the Highway Construction Schedule. Project Co shall cooperate with City, the City's Project Manager and the Consultant, so as to permit City to occupy and to place such equipment in the most efficient manner possible. Such entry and occupation shall not be considered an acceptance of the Highway Work or in any way relieve Project Co from responsibility to complete this Project Agreement. Subject to Section 9.7(e) of the Project Agreement, Project Co is responsible to ensure the completion of the Highway Work in accordance with the Highway Scheduled Substantial Completion Date and that the Highway Work is ready for use by City in accordance with the Contract Documents including the requirements of paragraphs (b) and (c), and to the extent available, paragraph (d) of "Substantial Completion of the Highway Work", as defined in Schedule 1 – Definitions and Interpretation. Project Co acknowledges that Substantial Completion of the Highway Work is only achieved in respect of the Highway Work as a whole and not in respect of any phase.

11.13 Cutting and Remedial Highway Work

- (a) Project Co shall do the cutting and remedial work required to integrate the several parts of the Highway Work in a cohesive manner.
- (b) Project Co shall coordinate the Highway Work to ensure that this requirement is kept to a minimum.
- (c) Cutting and remedial work shall be performed by specialists familiar with the Products affected and shall be performed in a manner to neither damage nor endanger the Highway Work.

11.14 Cleanup

- (a) Project Co shall maintain the Highway Work in a tidy condition and free from the accumulation of waste products and debris, other than that caused by City, Other Contractors or their employees.

- (b) Project Co shall remove waste products and debris, other than that resulting from the work of City, Other Contractors or their employees, and shall leave the Highway Work clean and suitable for use by City on the Highway Substantial Completion Date. Project Co shall remove products, tools, construction machinery, and equipment not required for the performance of the remaining Highway Work.
- (c) Prior to application for the final certificate for payment, Project Co shall remove products, tools, construction machinery and equipment, and waste products and debris, other than that resulting from the work of City, Other Contractors or their employees.
- (d) In the event of any dispute regarding the removal of waste products, debris, tools, equipment, and the like, City shall provide a written notice to Project Co to remove the said waste and debris and allow a reasonable period of time for Project Co to remove the said materials. If Project Co fails to remove the materials within the time specified, City may remove the waste products and debris and withhold an amount equal to such cost, in an amount that the Consultant shall determine to be reasonable.

11.15 Project Co Attending Meetings

- (a) Project Co shall attend meetings with respect to the Highway Work as may be directed by the Consultant. Project Co shall not claim any extra compensation for attendance at these meetings. Each of Project Co and City shall designate a representative to attend such meetings who is able to make decisions on each of their respective behalfs.

11.16 Defective Highway Work

- (a) Project Co shall promptly remove from the Highway Site and replace or re-execute defective Highway Work that fails to conform to the Contract Documents whether or not the defective Highway Work has been incorporated in the Highway Work and whether or not the defect is the result of poor workmanship, use of defective Products or damage through carelessness or other act or omission of Project Co. The correction of defective Highway Work shall be at Project Co's expense. Project Co shall rectify, in a manner acceptable to the Consultant, all defective Highway Work and deficiencies throughout the Highway Work, whether or not they are specifically identified by the Consultant, and Project Co shall prioritize the correction of any defective Highway Work so as not to interfere with or derogate from the Highway Construction Schedule, provided that Project Co shall prioritize the correction of any defective Highway Work that in City's Discretion is determined to adversely affect the day to day operation of the Highway.
- (b) Project Co shall Make Good promptly Other Contractors' work destroyed or damaged by such rectifications at Project Co's expense.

- (c) If in the opinion of the Consultant it is not expedient to correct defective Highway Work or Highway Work not performed as provided in the Contract Documents, City may deduct from the amount of the Highway Milestone Payment the difference in value between the work as performed and that called for by the Contract Documents. If City and Project Co do not agree on the difference in value, they shall refer the matter to the Consultant for a determination and the determination will be issued as a Variation Confirmation.

11.17 Project Co Highway Design Contingency

- (a) The Cost of the Highway Work, the Highway Milestone Payment and the Highway Final Payment include the Project Co Highway Design Contingency.
- (b) Subject to City's responsibilities under Section 11.17(c), the Project Co Highway Design Contingency shall apply to any and all changes, extras or costs attributable to:
 - (i) Highway Design Issues which are properly inferable, readily apparent or readily discoverable from the Contract Documents as forming part of the Highway Work or contrary to Good Industry Practice (Highway) as it relates to the constructability of the Highway Work which Highway Design Issues shall, for greater certainty, be limited to those Highway Design Issues arising under, or with respect to, or in connection with, matters requiring clarification, information and/or further instruction in the Contract Documents that do not constitute negligent design or engineering;
 - (ii) Highway Design Issues which are related to design coordination and are caused by inconsistencies, conflicts, exclusions, interferences or gaps that are properly inferable, readily apparent or readily discoverable from the Contract Documents, and particularly, the plans, Highway Drawings and Highway Specifications; and
 - (iii) Highway Design Issues which are related to design completion and where the design intent is properly inferable, readily apparent or readily discoverable from the Contract Documents and has not been fully detailed or specified,

(collectively, the "**Project Co Highway Design Issues**"). The terms "properly inferable", "readily apparent" and "readily discoverable" as used in this Schedule 40, shall be interpreted by taking into consideration Project Co's and the Construction Contractor's experience and the investigation and examination of the Contract Documents carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Date, as represented by Project Co to City in Sections 5.1 and 6.5(a) of the Project Agreement and having regard to the standard of care required under Section 11.2(a)(viii).

- (c) City shall, as between itself and Project Co, assume full responsibility and liability for the use of the design by Project Co, in all respects other than Project Co Highway Design Issues, including the core efficacy and functionality of the design, both in terms of ability and capacity to:
- (i) produce the desired effect in terms of the highway systems, including the structural, mechanical, electrical and information technology systems; and/or
 - (ii) meet the requirements of Annex G to this Schedule 40 in effect at Financial Close, but this shall not relieve Project Co of the obligation to provide for all standard requirements applicable to the installation of the Highway Work, whether or not set out in the Highway Specifications.

In assessing whether a Highway Design Issue is properly characterized as the responsibility of City, the Consultant shall have regard to the Risk Assessment Guidelines, which provide examples of the types of issues that may be encountered and the findings the Consultant would make regarding the categorization of each as a Project Co Highway Design Issue or a Highway Design Issue for which City is responsible. Project Co and City acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (d) Subject to and without limiting City's responsibilities under Section 11.17(c) and provided that City fulfills its responsibilities under Section 11.17(c), Project Co shall deliver fully functional and operational systems and all components shown in the Highway Drawings shall be provided as fully complete and fully functional systems in accordance with the Contract Documents. Project Co shall verify the dimensions shown in the drawings before the layout of the Highway Work.

11.18 Procedure for Addressing Highway Design Issues

- (a) When Project Co identifies a Highway Design Issue, Project Co shall promptly notify the Consultant in writing, under a request for information, of such Highway Design Issue and may propose a resolution to the Highway Design Issue. Upon receipt of Project Co's notification and proposed resolution, if any, the Consultant shall:
- (i) if a proposed resolution is provided by Project Co, proceed to review the proposed resolution and either:
 - (A) confirm that such resolution is acceptable (and a resolution will be considered acceptable if such resolution meets the requirements of the first sentence of Section 11.18(c));
 - (B) reject the proposed resolution and request that additional information be provided or request that an alternative resolution be proposed by Project Co; or

- (C) reject the proposed resolution and provide instructions to Project Co setting out an acceptable resolution;
- (ii) if no resolution is proposed by Project Co, provide instructions to Project Co setting out an acceptable resolution.

As soon as the Consultant has confirmed to Project Co an acceptable resolution to the Highway Design Issue, Project Co shall proceed to implement such acceptable resolution. If the Consultant characterizes the Highway Design Issue as a Project Co Highway Design Issue, the Consultant shall issue a Supplemental Instruction and the cost, if any, of implementing the acceptable resolution to the Highway Design Issue shall form part of the Project Co Highway Design Contingency. If the Consultant characterizes the Highway Design Issue as a matter that is not a Project Co Highway Design Issue, the Consultant shall request that City issue a Variation Enquiry or a Variation Directive, as applicable in the circumstances, and the cost, if any, of implementing the acceptable resolution to the Highway Design Issue and the additional time, if any, required to implement the acceptable resolution to the Highway Design Issue shall be documented in a Variation Confirmation. If either City or Project Co is of the view that the Highway Design Issue is not properly characterized by the Consultant, or if either City or Project Co does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Highway Design Issue, then either City or Project Co may dispute the characterization of the Highway Design Issue or the Consultant's decision regarding what constitutes an acceptable resolution to the Highway Design Issue, pursuant to Section 11.18(d). The Consultant's response to any Highway Design Issue will be provided in accordance with Section 8.2(i). Any professional design services of the Consultant, whether to issue the Supplemental Instruction, Variation Enquiry, Variation Directive or otherwise, will be a City cost. In assessing whether a Highway Design Issue is properly characterized as a Project Co Highway Design Issue, City and Project Co shall have regard to the Risk Assessment Guidelines. Project Co and City acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (b) When the Consultant identifies a Highway Design Issue, the Consultant shall promptly notify Project Co of such Highway Design Issue in writing as a Supplemental Instruction or by providing a Variation Enquiry or a Variation Directive, as applicable in the circumstances. If issued as a Supplemental Instruction, Project Co may review the Highway Design Issue and propose an alternative resolution to the Consultant. Upon receipt of Project Co's proposed alternative resolution, the Consultant shall proceed to review the proposed alternative resolution and either:
 - (i) confirm that such resolution is acceptable (and a resolution will be considered acceptable if such resolution meets the requirements of the first sentence of Section 11.18(c));

- (ii) reject the proposed resolution, request that additional information be provided or request a further alternative resolution be proposed by Project Co; or
- (iii) reject the proposed resolution and provide instructions to Project Co setting out an acceptable resolution.

As soon as the Consultant has confirmed to Project Co an acceptable resolution to the Highway Design Issue, Project Co shall proceed to implement such acceptable resolution. If the Consultant characterizes the Highway Design Issue as a Project Co Highway Design Issue, the Consultant shall issue a Supplemental Instruction and the cost, if any, of implementing the acceptable resolution to the Highway Design Issue shall form part of the Project Co Highway Design Contingency. If the Consultant characterizes the Highway Design Issue as a matter that is not a Project Co Highway Design Issue, the Consultant shall request that City issue a Variation Enquiry or a Variation Directive, as applicable in the circumstances, and the cost, if any, of implementing the acceptable resolution to the Highway Design Issue and the additional time, if any, required to implement the acceptable resolution to the Highway Design Issue shall be documented in a Variation Confirmation. If either City or Project Co is of the view that the Highway Design Issue is not properly characterized by the Consultant or if either City or Project Co does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Highway Design Issue, either City or Project Co may dispute the characterization of the Highway Design Issue or the Consultant's decision regarding what constitutes an acceptable resolution to the Highway Design Issue, pursuant to Section 11.18(d). The Consultant's response shall be provided in accordance with the provisions of Section 8.2(i). Any professional design services of the Consultant, whether to issue the Supplemental Instruction, Variation Enquiry or Variation Directive or otherwise, will be a City cost. In assessing whether a Highway Design Issue is properly characterized as a Project Co Highway Design Issue, City and Project Co shall have regard to the Risk Assessment Guidelines. Project Co and City acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (c) An acceptable resolution to a Highway Design Issue shall be a resolution that (i) in all respects is consistent with the design intent and quality standards of the Contract Documents; (ii) will not interfere with the efficient operations of City; and (iii) will not increase the life cycle costs of the Highway. If the resolution to a Highway Design Issue proposed by the Consultant is of a higher quality, not consistent with the design intent and quality standards of the Contract Documents, Project Co will, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation in the Scope of the Highway Work.
- (d) If either City or Project Co is of the view that a Highway Design Issue is not properly characterized by the Consultant or does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Highway

Design Issue, either City or Project Co may dispute the characterization of the Highway Design Issue or the Consultant's decision regarding what constitutes an acceptable resolution to the Highway Design Issue, and such issues will be determined in accordance with Schedule 27 – Dispute Resolution Procedure. Project Co acknowledges that notwithstanding any such dispute, the Consultant may issue a Supplemental Instruction to Project Co for a resolution to the Highway Design Issue and Project Co shall proceed to implement such resolution to the Highway Design Issue in accordance with the Supplemental Instruction issued by the Consultant, pending resolution of the dispute and subject to Section 1A.3 of Schedule 27 – Dispute Resolution Procedure.

- (e) The Project Co Highway Design Contingency is included in the Cost of the Highway Work, the Highway Milestone Payment and the Highway Final Payment and Project Co is solely responsible for all costs to remedy all Highway Design Issues that are properly characterized as Project Co Highway Design Issues, and Project Co will not be entitled to any additional compensation or change in the Highway Contract Time with respect to any and all Highway Design Issues that are properly characterized as Project Co Highway Design Issues, subject, in each case, to Section 11.18(c), and to the responsibility of City, at City's cost, for the provision of professional design services as specifically provided in Sections 11.18(a) and 11.18(b). Subject to the preceding sentence, and notwithstanding anything to the contrary in this Schedule 40, Project Co acknowledges and agrees that it shall have no recourse against City in respect of any Project Co Highway Design Contingency or any costs directly or indirectly arising out of a Highway Design Issue that is properly characterized as a Project Co Highway Design Issue. Project Co is not accountable to City for the expenditure of the amount Project Co has carried as the Project Co Highway Design Contingency and City has no entitlement to claim the unused portion, if any, of the Project Co Highway Design Contingency. Payment of the Highway Milestone Payment and the Highway Final Payment to Project Co (which, for greater certainty, shall include any unused portion of the Project Co Highway Design Contingency) shall fully satisfy Project Co in respect of its costs to carry the Project Co Highway Design Contingency and all costs of Project Co to remedy all Highway Design Issues that are properly characterized as Project Co Highway Design Issues. Further to and without limiting the foregoing, but, subject to the limitations set out in Section 57.4 of the Project Agreement, Project Co acknowledges and agrees that it shall have no recourse against the Consultant in respect of any Highway Design Issue, except for claims arising in relation to the professional negligence or errors and omissions of the Consultant.
- (f) Project Co shall provide the Consultant, City and the City's Project Manager with a detailed weekly update report in form and substance satisfactory to the Consultant and City, on the status of all outstanding Highway Design Issues.

11.19 [Reserved]**11.20 Temporary Supports, Structures and Facilities**

- (a) 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 Highway Shop Drawings related thereto by City or Consultant does not relieve Project Co of its "sole responsibility" under this section.
- (b) Project Co shall engage registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in Section 11.20(a) where required by law or by the Contract Documents 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.
- (c) Subject to Section 11.17, but notwithstanding the provisions of Sections 11.2, 11.20(a) and 11.20(b) or provisions to the contrary elsewhere in the Contract Documents, where such Contract Documents include designs for temporary supports, structures and facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the Highway Work and Project Co shall not be held responsible for that part of the design or the specified method of construction. Project Co shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the Highway Work.

11.21 Protection of Highway Work and Property

- (a) Project Co shall protect the Highway Work and City and HMQ's property at the Highway Site, including the Existing Highway Infrastructure and property adjacent to the Highway Site, from damage which may arise as a result of Project Co's operations under this Schedule 40, and shall be responsible for such damage, except damage which occurs as a result of:
 - (i) Highway Design Issues (other than Highway Design Issues which are properly characterized as a Project Co Highway Design Issues under Section 11.17); or
 - (ii) acts or omissions by City, the Consultant or any contractor retained by City directly and whose contract is not assigned to Project Co, their respective agents and employees.
- (b) Should Project Co, in the performance of this Schedule 40, damage the Highway Work, City or HMQ's property at the Highway Site, including the Existing Highway Infrastructure or property adjacent to the Highway Site, Project Co shall be responsible to Make Good such damage at Project Co's expense.

- (c) Should damage occur to the Highway Work or City or HMQ's property at the Highway Site, including the Existing Highway Infrastructure for which Project Co is not responsible, as provided in Section 11.21(a), Project Co shall Make Good such damage to the Highway Work and, if City so directs, to City's property and the Highway Milestone Payment and the Highway Final Payment and Highway Contract Time shall be adjusted as provided in Schedule 22 – Variation Procedure.
- (d) Project Co shall not undertake to repair and/or replace any damage whatsoever to adjoining property or acknowledge the same was caused or occasioned by Project Co, without first consulting City and receiving written instructions as to the course of action to be followed.
- (e) Notwithstanding Section 11.21(d), where there is danger to life or property which arises out of or in connection with the performance of the Highway Work, either Party may, but Project Co shall, take such emergency action as is necessary to remove the danger.

11.22 No Highway Site Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered against the Highway Site or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) In the event that the Highway Site or any part thereof or any interest therein becomes subject to any Encumbrance which has not been consented to in writing by City due to an act or omission of Project Co or any Project Co Party, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, City will be at liberty to take whatever steps it deems necessary and appropriate to 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, all of which shall be payable on demand.

11.23 Highway Maintenance Services

- (a) Project Co shall perform all of the maintenance and other work to be performed and services to be provided as described in Part A of Annex G - Highway Supplementary Conditions to this Schedule 40 referencing "Notice to Contractor – Queensway Maintenance Requirements", from the commencement of the Highway Work until the Highway Substantial Completion Date.
- (b) Project Co shall perform all of the maintenance and other work to be performed and services to be provided in respect of the ATMS and landscaping as described in Item No. 277 – Maintenance and Warranty for Advanced Traffic Management

System Work and in Item No. 154 – Maintenance and Warranty for Landscape Planting in Part C of Annex G - Highway Supplementary Conditions to this Schedule 40 (the “**Highway Post Substantial Completion Maintenance**”) from the Highway Substantial Completion Date until the expiry of the Highway Warranty.

12. HIGHWAY CONSTRUCTION SCHEDULE

12.1 The Highway Construction Schedule

- (a) Project Co shall:
- (i) review the proposed schedules and deadlines of City for the Highway Work and where City has not specified particular dates for the Highway Work, Project Co shall set those dates so as to achieve the Highway Work on an as early as achievable basis and include them in its proposed Highway Construction Schedule under Section 12.1(a)(ii);
 - (ii) prepare and submit to City and the Consultant as soon as practical and in any event within 45 days of Financial Close, a detailed computerized Highway Construction Schedule (in both hard paper copy and computer readable soft copy) using a critical path method (“**CPM**”) network and a Highway Construction Schedule dependent cash flow forecast, each in a form approved by City. The planning and schedule software shall be “Primavera” with the most current release available to be used. The Highway Construction Schedule and any other schedule related reporting requirements of Project Co shall conform to the phasing and sequencing requirements for the Highway Work as set out in the Contract Documents, the Highway Scheduled Substantial Completion Date, the Highway Scheduled Final Completion Date, the Highway Specifications, the schedule for Highway Commissioning and for achieving the Highway Scheduled Substantial Completion Date and the Highway Scheduled Final Completion Date. City and the Consultant will respond to Project Co, in writing, within 10 Business Days of receipt of the Highway Construction Schedule, with either its detailed comments or acceptance of the Highway Construction Schedule as complete;
- (A) Without limiting the generality of the foregoing, the Highway Construction Schedule shall:
- 1. show the sequence and interdependence of all activities required to complete the Highway Work, including time for review of Highway Shop Drawings and mix design submissions, early start date, early finish date, and float times. All network connections used to create a logical schedule and the corresponding durations shall be shown. Activities on the critical path shall be identified clearly on the diagram;

2. reflect operational constraints, interim completion dates, and other scheduling requirements with respect to the Highway Work specified in the Contract Documents; and
 3. include all non-working periods and appropriate allowances for inclement weather.
- (B) Project Co shall select the activities so that the Highway Work is identifiable and the progress of each activity can be determined. The City reserves the right to limit or increase the number of activities on the diagram.
- (C) All revisions to the Highway Construction Schedule shall be highlighted on the updated schedule. Updated schedules submitted shall reflect actual progress of the Highway Work and any additions, deletions, or revisions to the Highway Work that have arisen since the previous update.
- (iii) in the event that City and the Consultant do not accept Project Co's initial Highway Construction Schedule submission as complete, Project Co shall re-submit the Highway Construction Schedule as many times as necessary, revised in accordance with City's and the Consultant's detailed comments and each re-submission shall be provided within 5 Business Days of receipt of the Consultant's and City's detailed comments, who in turn shall also respond within 5 Business Days. When the Highway Construction Schedule has been accepted as complete by City and the Consultant, it shall be the baseline Highway Construction Schedule against which Project Co shall monitor progress of the Highway Work;
- (iv) advise the Consultant promptly of any error or omission in the Highway Construction Schedule and correct such error or omission;
- (v) continuously monitor the progress of the Highway Work in relation to the Highway Construction Schedule and the cash flow and update the Highway Construction Schedule, maintain the continuity of the Highway Construction Schedule's CPM network for all updates and revisions and immediately notify City of any variance or potential variance in the Highway Scheduled Substantial Completion Date and the Highway Scheduled Final Completion Date;
- (vi) advise the Consultant of any revisions required to the Highway Construction Schedule as a result of extension of the Highway Contract Time in accordance with Schedule 22 – Variation Procedure;
- (vii) identify potential variances between scheduling and scheduled completion dates, review the schedule of Highway Work not started or incomplete and implement necessary adjustments in the Highway Construction Schedule in order to meet the Highway Scheduled Substantial Completion Date and

the Highway Scheduled Final Completion Date set out in the Highway Construction Schedule, including the movement of manpower and equipment in response to availability of work areas;

- (viii) comply with the Highway Construction Schedule so as not to interfere with the activities of the MTO and, if applicable, the City in the Existing Highway Infrastructure;
- (ix) monitor the Subcontractors' personnel staffing and equipment and the availability of materials and supplies in order to meet the Highway Construction Schedule and take appropriate courses of action when the requirements of a Subcontract with any Project Co Party are not met;
- (x) obtain from Project Co Parties a schedule showing the order number, vendor's name, shop drawing status, manufacturing lead time and delivery date of all critical material and equipment required for the Highway Work;
- (xi) pre-order equipment, materials and supplies where necessitated by cost and/or time factors and expedite delivery of critical items; and
- (xii) in consultation with the City's Project Manager and the Consultant, include in the Highway Construction Schedule the integration of the equipment specifications, rough-in requirements, supply and installation, including of City's equipment to ensure that the ordering, delivery, receiving and supply of equipment does not impact on the Highway Construction Schedule.

12.2 Changes to Critical Path

- (a) Any changes to the critical path of the Highway Construction Schedule initiated by Project Co must be approved in writing by City. Subject to the terms of Schedule 22 – Variation Procedure, any City approval of such changes to the critical path does not entitle Project Co to a Variation Confirmation, an extension of the Highway Contract Time or an addition to the Highway Milestone Payment and the Highway Final Payment.

12.3 Failure to Maintain Schedule

- (a) If Project Co is not meeting the deadlines set out in the Highway Construction Schedule consistent with its obligations under this Schedule 40, then at the written request of City or the Consultant, Project Co, and the Project Co Parties as required, shall promptly increase efforts on the Project, including the addition of more personnel to the Project during regular times and during periods of time for which overtime may be required, and if the delay is for any reason other than as described in Sections 40.1(a) of the Project Agreement, all expenses and costs incurred as a result shall be borne by Project Co. Any dispute between the parties as to whether Project Co is meeting the deadlines set out in the Highway

Construction Schedule shall be resolved in accordance with the provisions of Schedule 27 - Dispute Resolution Procedure.

13. [RESERVED]

14. CONTAMINATION

14.1 Contamination

- (a) [Reserved].
- (b) Prior to Project Co commencing the Highway Work, City has:
- (i) taken all reasonable steps to determine whether any Hazardous Substances are present at the Highway Site; and
 - (ii) provided the Consultant and Project Co with a report on any such Hazardous Substances, which report Project Co acknowledges is included in the Highway Site Information.
- (c) Project Co shall take all reasonable steps to ensure that:
- (i) no person suffers injury, sickness or death and no property is injured or destroyed as a result of exposure to or the presence of Hazardous Substances which were at the Highway Site prior to Project Co commencing the Highway Work, which are described in or are properly inferable, readily apparent or readily discoverable from the Highway Site Information (“**Disclosed Hazardous Substances**”);
 - (ii) all necessary steps are taken under Applicable Law, to dispose of, store or otherwise render harmless Disclosed Hazardous Substances, save and except those not found on or affecting the area of the Highway Work on the Highway Site, unless otherwise expressly required pursuant to the Contract Documents; and
 - (iii) there is no discharge, escape, emission, leak, deposit, dispersion or migration into the environment (“**Release**”) or threatened Release of any Disclosed Hazardous Substances at or from the Highway Site which has or may have an adverse effect upon the environment or human health or safety
- as a result of the performance of the Highway Work by Project Co.
- (d) Project Co shall take reasonable steps to ensure that:
- (i) no person suffers injury, sickness or death and no property is injured or destroyed as a result of exposure to or the presence of Hazardous

Substances brought to the Highway Site by Project Co or any Project Co Party (“**Project Co Hazardous Substances**”);

- (ii) Project Co and each Project Co Party is responsible to comply with all Applicable Law relating to Project Co Hazardous Substances; and
 - (iii) there is no Release or threatened Release of any Project Co Hazardous Substances at or from the Highway Site which has or may have an adverse effect upon the environment or human health or safety.
- (e) If Project Co:
- (i) encounters Hazardous Substances at the Highway Site, or
 - (ii) has reasonable grounds to believe that Hazardous Substances are present at the Highway Site,

which were not disclosed by City, as required under Section 14.1(b) or which were not properly inferable, readily apparent or readily discoverable from the Highway Site Information (the “**Undisclosed Hazardous Substances**”), Project Co shall:

- (iii) take all reasonable steps, including stopping the Highway Work, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the Hazardous Substances; and
 - (iv) immediately report the circumstances to the Consultant and City in writing.
- (f) If Project Co is delayed in performing the Highway Work or incurs additional costs as a result of taking steps required under Section 14.1(e)(iii) (except where a Release or threatened Release is caused by a default by Project Co in the performance of its obligations under this Article 14), the Consultant shall issue appropriate instructions for a Variation in the Scope of the Highway Work as provided in Schedule 22 – Variation Procedure, and the Highway Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with City and Project Co, and the Highway Milestone Payment and the Highway Final Payment shall be adjusted by a reasonable amount for costs incurred by Project Co as a result of the delay and as a result of taking those steps.
- (g) Notwithstanding Sections 8.2(f), 8.2(g) and Schedule 27 – Dispute Resolution Procedure, the Consultant may select and rely upon the advice of an independent expert in a dispute under Section 14.1(f) and, in that case, the expert shall be deemed to have been jointly retained by City and Project Co and shall be jointly paid by them.

- (h) In the event of any Release or threatened Release of any Hazardous Substances at or from the Highway Site, Project Co shall immediately, upon becoming aware of same, notify the Consultant and City of such event.
- (i) [Reserved];
- (j) If Project Co causes or permits:
 - (i) any Project Co Hazardous Substances to be dealt with by Project Co or any Project Co Party in a manner which does not comply with Applicable Law or which threatens human health and safety or the environment or causes material damage to the property of City or others; or
 - (ii) any Disclosed Hazardous Substances which were already at the Highway Site but which were then harmless or stored, contained or otherwise dealt with in accordance with Applicable Law, to be dealt with by Project Co or any Project Co Party in a manner which does not comply with Applicable Law or which threatens human health and safety or the environment or causes material damage to the property of City or others,

Project Co, upon becoming aware of same shall:

- (iii) take all reasonable steps, including stopping the Highway Work, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the Hazardous Substances; and
 - (iv) upon becoming aware of same, report the circumstances to the Consultant and City by telephone, confirmed in writing.
- (k) In the circumstances contemplated in Sections 14.1(c), 14.1(d), 14.1(e) or 14.1(j), Project Co shall perform its obligations thereunder, at Project Co's sole cost and expense (except in the circumstances contemplated by Section 14.1(e), which shall be at City's sole cost and expense in accordance with the provisions of Section 14.1(f)). Project Co shall perform its obligations under Sections 14.1(c), 14.1(d), 14.1(e) or 14.1(j), including, as applicable, any clean up, removal, containment, storage or other dealing with relevant Hazardous Substances and any remediation of damage caused thereby, in a manner which the Governmental Authorities determine will:
- (i) meet all Applicable Law, including the applicable Table of the Soil Groundwater and Sedimentary Standards for use under Part XV.I of the *Environmental Protection Act* (Ontario), dated March 9, 2004, and ensure compliance with any applicable Permits, Licences and Approvals; and
 - (ii) rectify all material damage to the property of City and others.

15. SUBSTANTIAL COMPLETION OF THE HIGHWAY WORK

15.1 Substantial Completion of the Highway Work

- (a) Project Co shall deliver a notice of the date anticipated to be the Highway Substantial Completion Date (the “**Highway Substantial Completion Countdown Notice**”) to the City and the Consultant at least 180 days prior to Highway Scheduled Substantial Completion Date (the “**Required Highway Substantial Completion Notification Date**”) confirming whether or not Substantial Completion of the Highway Work shall occur by the Highway Scheduled Substantial Completion Date . If Project Co fails to deliver the Highway Substantial Completion Countdown Notice on or before the Required Highway Substantial Completion Notification Date, it shall be deemed to be a notification that Substantial Completion of the Highway Work will not be achieved by the Highway Scheduled Substantial Completion Date. In the event that Project Co shall provide the Highway Substantial Completion Countdown Notice to the City on or before the Required Highway Substantial Completion Notification Date that Substantial Completion of the Highway Work shall occur by the Highway Scheduled Substantial Completion Date, but Project Co shall determine following such notification that Substantial Completion of the Highway Work shall not occur on or before the Highway Scheduled Substantial Completion Date, Project Co shall notify the City in writing in respect thereof (the “**Subsequent Highway Notice**”).
- (b) In the event that Project Co provided the Highway Substantial Completion Countdown Notice to the City on or before the Required Highway Substantial Completion Notification Date that Substantial Completion of the Highway Work shall occur by the Highway Scheduled Substantial Completion Date but Substantial Completion of the Highway Work does not occur by the Highway Scheduled Substantial Completion Date (whether or not Project Co sent a Subsequent Highway Notice to the City), the City shall be entitled to an amount of \$1,000,000 on account of Liquidated Damages and Project Co shall pay such Liquidated Damages to the City. Such amount of Liquidated Damages shall constitute the City’s sole recourse against Project Co in respect of a failure to achieve Substantial Completion of the Highway Work by the Highway Scheduled Substantial Completion Date.
- (c) If the Highway Substantial Completion Countdown Notice (or a deemed notification or a Subsequent Highway Notice pursuant to Section 15.1(a)) is provided and states that Substantial Completion of the Highway Work will not be achieved by the Highway Scheduled Substantial Completion Date, Project Co shall deliver a Notice to the City as soon as possible thereafter and in any event before the end of the second month following the Required Highway Substantial Completion Notification Date as to the date on, which Substantial Completion of the Highway Work shall occur (the “**Highway Proposed Date**”), which Highway Proposed Date shall be at least one month plus the number of days to the first Monday after such one month period (the “**Highway Minimum Subsequent**

Time”) following the Highway Scheduled Substantial Completion Date (or such earlier date as shall be approved by the City in its Discretion) and which Highway Proposed Date shall require the approval of the City within a period of 10 Business Days thereafter. Failure by the City to provide a response, either positive or negative, shall imply approval by the City. In the event that the City does not approve the Highway Proposed Date, the Highway Proposed Date shall be as mutually agreed upon between Project Co and the City, each acting reasonably, as soon as possible thereafter, and failing agreement within a period of 10 Business Days, the Highway Proposed Date shall be determined by the Dispute Resolution Procedure outlined in Schedule 27 – Dispute Resolution Procedure (which Highway Proposed Date shall in any event be at least the Highway Minimum Subsequent Time following the Highway Scheduled Substantial Completion Date) and take into account the City’s operating booking and scheduling requirements. A Highway Proposed Date determined in accordance with this Section 15.1(c) is herein referred to as the “**New Highway Scheduled Substantial Completion Date**”.

- (d) In the event that Substantial Completion of the Highway Work is not achieved on or before the New Highway Scheduled Substantial Completion Date the procedure set out in Section 15.1(c) respecting the resetting of a New Highway Scheduled Substantial Completion Date shall be repeated (and such procedure shall continue to be repeated, if necessary). Such amount of Liquidated Damages shall constitute the City’s sole recourse against Project Co in respect of a failure to achieve Substantial Completion of the Highway Work by the New Highway Scheduled Substantial Completion Date.
- (e) In the event that Substantial Completion of the Highway Work is not achieved on or before the New Highway Scheduled Substantial Completion Date, the Liquidated Damages to which the City shall be entitled shall be the sum of \$1,000,000 following the New Highway Scheduled Substantial Completion Date to and including the reset New Highway Scheduled Substantial Completion Date, provided that Substantial Completion of the Highway Work is achieved by such reset New Highway Scheduled Substantial Completion Date. Such amount of Liquidated Damages shall constitute the City’s sole recourse against Project Co in respect of a failure to achieve Substantial Completion of the Highway Work by the New Highway Scheduled Substantial Completion Date.
- (f) In the event that there is a Dispute concerning Substantial Completion of the Highway Work and such Dispute is ongoing, the City shall not be entitled to payment of Liquidated Damages unless and until such Dispute is resolved in accordance with the Dispute Resolution Procedure outlined in Schedule 27 – Dispute Resolution Procedure and, if resolved in favour of the City, the provisions, respecting Liquidated Damages contained in this Section 15.1 shall apply with retroactive effect, except that there shall be added to the amount payable by Project Co on account of Liquidated Damages, interest at the rate of 2 percent per annum from the date the Liquidated Damages were required to be paid in the absence of the Dispute to the date of payment.

- (g) The payment of any amount of Liquidated Damages pursuant to this Section 15.1 shall not reduce the maximum amount of liability of Project Co as provided for in Section 57.4 of the Project Agreement.

16. HIGHWAY COMMISSIONING AND COMPLETION

16.1 Highway Commissioning and Completion

- (a) Project Co shall give the Consultant and the City Representative notice (the “**Highway Substantial Completion Notice**”) upon the satisfaction of all requirements for Substantial Completion of the Highway Work, which shall describe, in reasonable detail, the satisfaction of the requirements for the Substantial Completion of the Highway Work, together with Project Co’s opinion as to whether the conditions for issuance of the Highway Substantial Completion Certificate have been satisfied. Project Co shall, by the date which is 20 days prior to the anticipated Highway Substantial Completion Date as set out in the Highway Substantial Completion Notice, prepare a list, in electronic format on software that identifies deficiencies by division, trade and location (“**Project Co’s Preliminary Highway Minor Deficiencies List**”) of Highway Minor Deficiencies, including an estimate of the cost of and the time for rectifying such Highway Minor Deficiencies.

At any time after receipt of the Highway Substantial Completion Notice, City may request one or more meetings to be attended by the Consultant and representatives of City, Project Co and the MTO to discuss the status of the requirements for Substantial Completion of the Highway Work.

- (b) Project Co shall reconfirm the anticipated Highway Substantial Completion Date in a notice given to City and to the Consultant 20 days prior to the anticipated Highway Substantial Completion Date which notice shall include a copy of Project Co’s Preliminary Highway Minor Deficiencies List. Project Co shall plan for start up and verification of all systems to be completed no later than 7 days prior to the anticipated Highway Substantial Completion Date. Project Co shall reconfirm the anticipated Highway Substantial Completion Date and when Project Co is satisfied that it has completed all of the requirements for Substantial Completion of the Highway Work, Project Co shall apply to City and the Consultant for certification of Substantial Completion of the Highway Work in a notice to City and the Consultant by the date which is 10 days prior to the anticipated Highway Substantial Completion Date. The Consultant shall in the next following 10 days, proceed to review and inspect the Highway Work for the purpose of: (i) confirming the achievement of Substantial Completion of the Highway Work and providing its report with respect thereto pursuant to Section 16.1(d); (ii) certifying substantial performance of the Highway Work in accordance with the test for substantial performance set out in the CLA pursuant to Section 16.1(c); and (iii) taking into account Project Co’s Preliminary Highway Minor Deficiencies List, preparing its own list of Highway Minor Deficiencies (the “**Highway Minor Deficiencies List**”) and its estimate of the cost of and the

time for rectifying the Highway Minor Deficiencies set out in the Highway Minor Deficiencies List, and the cost of completing any other work required to meet the requirements of Highway Final Completion.

- (c) When the Consultant is satisfied that substantial performance of the Highway Work has been achieved in accordance with the test for substantial performance set out in the CLA, the Consultant shall provide Project Co and City with a certificate of substantial performance (the "**Highway CLA Certificate**"). Project Co shall publish the Highway CLA Certificate in accordance with Section 32(1) of the CLA.
- (d) When the Consultant is satisfied that Substantial Completion of the Highway Work has been achieved, the Consultant shall provide to City and to Project Co a report confirming the Highway Minor Deficiencies List and the date on which the Consultant determines that Substantial Completion of the Highway Work was achieved. Failure to include an item on the Highway Minor Deficiencies List does not alter the responsibility of Project Co to complete the Highway Work. The Consultant shall also set out in its report the Net Highway Payment Adjustment, as calculated in accordance with Annex G to this Schedule 40.
- (e) The Consultant shall state the Highway Substantial Completion Date as set out in its report delivered under Section 16.1(d) in a certificate (the "**Highway Substantial Completion Certificate**").
- (f) The Consultant shall prepare the Highway Minor Deficiencies List before a certificate of Substantial Completion of the Highway Work is issued, and if the Highway CLA Certificate has been issued, then the Consultant shall not withhold the Highway Substantial Completion Certificate by reason solely that there are such Highway Minor Deficiencies.
- (g) Project Co shall publish in a construction trade newspaper in the area of the location of the Highway Work, a copy of the Highway CLA Certificate and Project Co shall provide suitable evidence of the publication to the Consultant and City.
- (h) On the Highway Milestone Payment Date, City may withhold from the Highway Milestone Payment a holdback amount that is equal to 200% of the amount estimated by the Consultant to complete and rectify the Highway Minor Deficiencies (the "**Highway Minor Deficiencies Holdback**"). The Consultant shall inspect the completion of the Highway Minor Deficiencies and shall provide a monthly progress report to City describing the Highway Minor Deficiencies which have been completed to the satisfaction of the Consultant, and City shall release from the Highway Minor Deficiencies Holdback the amount of any holdback allocated to the Highway Minor Deficiencies which have been completed. If, at any time after the period for completion of the Highway Minor Deficiencies referred to in Section 16.1(1), any of the Highway Minor Deficiencies are not completed in 10 Business Days following Project Co's receipt of a written notice from City to correct the deficient work or Project Co is

not diligently working towards completion of the deficient work to the satisfaction of the Consultant, and unless City otherwise agrees, or the reasons for any delay are acceptable to City, or the delay is caused by City or a City Party, City may engage others to perform the work necessary to complete and rectify the Highway Minor Deficiencies at the risk and cost of Project Co and City may deduct such cost from the Highway Minor Deficiencies Holdback or any other amount remaining owing by City to Project Co. If the cost of completion and rectification of any Highway Minor Deficiencies exceeds the remaining amount in the Highway Minor Deficiencies Holdback, then Project Co shall reimburse the City for all such excess costs.

- (i) Project Co shall assign to City (or as City may direct) and submit with the application for Substantial Completion of the Highway Work, all guarantees, warranties (whether from manufacturers, suppliers, or Project Co Parties), certificates, preliminary testing and balancing reports, distribution system diagrams, maintenance and operation instructions, maintenance manuals and materials and any other materials or documentation required to be submitted under this Schedule 40 and otherwise required for the proper use and operation of the Highway Work (collectively, the “**Highway Work Deliverables**”). If Project Co requests, Project Co and the Consultant shall, within 60 days following the request of Project Co, settle and agree upon a list specifying in reasonable detail the items to be assigned and submitted under the foregoing sentence. If Project Co is unable to provide any of the Highway Work Deliverables for any reason, Project Co may submit a list of the outstanding Highway Work Deliverables and if a delay in the delivery of such outstanding Highway Work Deliverables will not impair the safety, security or health of any Highway User, such outstanding Highway Work Deliverables shall be included as Highway Minor Deficiencies. Failure to submit any of the Highway Work Deliverables that are required for the safe use of the Highway Work and as may be necessary for the safety, security and health of the Highway Users, shall be grounds for the Consultant to reject Project Co’s application for Substantial Completion of the Highway Work. The assignment by Project Co of all guarantees and warranties shall expressly reserve the right of Project Co to make any claims under such guarantees and warranties for the repair or replacement of any Highway Work and such assignment shall in no way prejudice any rights of or benefits accruing to Project Co pursuant to such guarantees and warranties. For greater certainty, nothing herein is intended to constitute a release or waiver of the obligation of Project Co to submit and assign (as applicable) to City all of the Highway Work Deliverables.
- (j) The submission of an application for payment upon Substantial Completion of the Highway Work shall constitute a waiver by Project Co of all claims whatsoever against City under this Schedule 40, whether for a change in the Highway Milestone Payment or the Highway Final Payment, extension of the Highway Contract Time or otherwise, except (i) those made in writing prior to Project Co’s application for payment upon Substantial Completion of the Highway Work, and still unsettled; (ii) any third party claim which Project Co was not aware of at such time and with respect to which Project Co is entitled to indemnification from

City in accordance with the Project Agreement; and (iii) subject to any subsequent waiver, claims arising out of any act or omission of City or any City Party after the date of the waiver, and third-party claims arising after the date of the waiver. For greater certainty, for the purposes of clauses (i) and (ii) above, a third party claim does not include any claim by a Project Co Party.

- (k) Project Co shall provide As-Built Highway Drawings and Highway Specifications, Record Documents, spare parts and Highway Shop Drawings as soon as possible and in any event within 30 days of the Highway Substantial Completion Date.
- (l) Save and except with City's prior written approval, Project Co shall complete all Highway Minor Deficiencies and assign and provide all of the Highway Work Deliverables that remain outstanding no later than 120 days from the date when Substantial Completion of the Highway Work is certified, unless the reasons for any delay are acceptable to City or the delay is caused by City or a City Party.
- (m) When Project Co considers the requirements for Highway Final Completion to have been achieved, Project Co shall give the Consultant and City Representative notice in the form set out in Annex H (the "**Highway Final Completion Notice**"), which shall include, in reasonable detail, support for Project Co's opinion that the requirements for Highway Final Completion have been achieved. The Highway Final Completion Notice shall also include the following documentation:
 - (i) a declaration that no written notices of lien arising from the performance of the Highway Work have been received by it;
 - (ii) Project Co's Statutory Declaration CCDC 9A;
 - (iii) Project Co's WSIB Certificate of Clearance;
 - (iv) a written statement that the Highway Work has been performed to the requirements of the Contract Documents and the Highway Final Completion has been achieved, itemizing approved changes in the Highway Work, the Consultant's written instructions, and modifications required by Governmental Authorities; and
 - (v) such other documentation as City may request, acting reasonably.
- (n) The Consultant will, no later than 10 days after the receipt of an application from Project Co pursuant to Section 16.1(m), complete its review of the Highway Work to verify the validity of the application, and no later than the 3rd Business Day after completing the review, will notify Project Co and the City Representative whether the application is valid or give reasons why it is not valid.
- (o) Subject to Article 17 of this Schedule 40, when the Consultant finds Project Co's application for final payment valid, the Consultant will issue a final certificate for payment (the "**Highway Final Completion Certificate**") and shall specify the Highway Final Completion Date.

- (p) Subject to the other requirements of this Project Agreement, the Highway Final Payment Date shall be the later of:
- (i) the 2nd Business Day following the expiration of all liens in respect of the Highway Work pursuant to the CLA; and
 - (ii) the 10th Business Day following the Highway Final Completion Date.
- (q) No payment by City under the Project Agreement nor partial or entire use of the Highway Work by City or any Highway User shall constitute an acceptance of any portion of the Highway Work or Products which are not in accordance with the requirements of the Contract Documents.

17. APPROVAL OF THE MTO

17.1 Approval of the MTO

- (a) Notwithstanding any other provision of the Project Agreement, the Consultant shall not issue the Highway Final Completion Certificate, and the Highway Final Completion Date shall not occur, before the MTO has provided notice of its acceptance of the Highway Work in writing to the Parties (the “**MTO Highway Acceptance**”).
- (b) As soon as practicable after the receipt of the Highway Final Completion Notice, City shall request, in writing, the MTO Highway Acceptance.
- (c) In the event that the MTO indicates to City that the request for the MTO Highway Acceptance is incomplete or deficient, Project Co and City agree to respond promptly to requests of the MTO for additional information it requires to make its determination regarding the issuance of the MTO Highway Acceptance.
- (d) In the event that the MTO does not respond in writing to City with respect to the MTO Highway Acceptance within 20 Business Days following the later of:
- (i) City’s initial request for the MTO Highway Acceptance; or
 - (ii) the date on which the MTO indicates to City that the request for MTO Highway Acceptance is now complete following the provision of additional information pursuant to Section 17.1(c).

City agrees to use commercially reasonable efforts to cause MTO to respond as soon as practicable.

18. [RESERVED]

19. [RESERVED]

20. [RESERVED]

- 21. [RESERVED]
- 22. [RESERVED]
- 23. [RESERVED]
- 24. [RESERVED]
- 25. [RESERVED]
- 26. [RESERVED]
- 27. [RESERVED]
- 28. [RESERVED]
- 29. [RESERVED]
- 30. [RESERVED]
- 31. [RESERVED]
- 32. [RESERVED]
- 33. [RESERVED]
- 34. [RESERVED]
- 35. **WARRANTY**

35.1 Project Co Warranty

- (a) Project Co warrants that the Highway Work, including all Products, and in addition, all parts and workmanship replaced during the initial warranty period, shall conform to the specifications set out in the Contract Documents in all respects and shall be new, of good quality material, of merchantable quality and fit for their intended purpose, as described in the Contract Documents, and free of defects in materials, equipment and workmanship for a period of two (2) years from, with respect to the Highway Work, from the Highway Substantial Completion Date (the “**Highway Warranty**”).

The Highway Warranty shall cover labour and material, including, the costs of removal and replacement of covering materials. The Highway Warranty shall not limit extended warranties on any items of equipment or material called for elsewhere in the Highway Specifications or otherwise provided by any manufacturer of such equipment or material. Project Co shall ensure that all extended warranties specified in the Contract Documents are provided and shall assign to City (or as City may direct) all such extended warranties in accordance with the provisions of Section 16.1(i).

35.2 Corrections

- (a) Project Co agrees to correct promptly, at its own expense, in a manner approved by City, defects, deficiencies or non-compliant items in the Highway Work which appear prior to and during the warranty periods set out in Section 35.1. Project Co acknowledges that the timely performance of warranty work is critical to the ability of City to maintain effective operations of the Highway. Project Co shall use commercially reasonable efforts to respond to the requirement of City to correct defective, deficient or non-compliant items in the Highway Work within the time periods required by City which, for example, in relation to critical time periods such as rush hours. Project Co further acknowledges that if City is unable to contact Project Co and/or obtain the corrective work within such time period required by City that Additional Contractors may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or non-compliant items in the Highway Work, at Project Co's sole cost and expense, and except in the case of damage caused by Additional Contractors, such emergency steps taken by Additional Contractors shall not invalidate any warranties in respect of such portion of the Highway Work affected by such corrective actions of Additional Contractors.

35.3 Make Good any Damage

- (a) Subject to Section 35.2, Project Co shall promptly, and in any event not more than 30 days after receipt of written notice thereof from the Consultant or City, Make Good any defects, deficiencies or non-compliant items in the Highway Work which may develop within periods for which said materials, equipment, Products and workmanship are warranted, and also Make Good any damage to other Highway Work caused by the repairing of such defects, deficiencies or non-compliant items. All of such Highway Work shall be at Project Co's expense. None of such Highway Work shall be the basis of a claim for a Variation Confirmation, additional compensation or damages. The above-noted time period of 30 days shall be subject to the following:
- (i) If the corrective Highway Work cannot be completed in the 30 days specified, Project Co shall be in compliance if Project Co:
- (A) commences and is diligently proceeding with the correction of the Highway Work within the specified time;
 - (B) provides City with a schedule acceptable to City for such correction; and
 - (C) corrects the Highway Work in accordance with such schedule.
- (b) If Project Co fails to correct the Highway Work in the time specified or subsequently agreed upon, without prejudice to any other right or remedy City may have, City may correct such Highway Work and deduct the cost and expense

thereof from any payment then or thereafter due to Project Co provided the Consultant has certified such cost to City.

35.4 Performance of Replacement Highway Work

- (a) The performance of replacement work and Making Good of defects, deficiencies or non-compliant items for which Project Co is responsible, shall be commenced and completed as expeditiously as possible, and shall be executed at times convenient to City and this may require work outside normal working hours at Project Co's expense. Any extraordinary measures required to complete the Highway Work, as directed by City to accommodate the operation of the Highway or other aspects of the Project as constructed shall be at Project Co's expense.

35.5 Opening, Tests, Inspections

- (a) Project Co shall, at any time or times prior to the expiry of said warranty period and when required to do so by City, make such openings, tests, inspections, excavations, examinations, or other investigations in, through, of or in the vicinity of the Highway Work as directed and shall, if required, Make Good again, to the satisfaction of City, any openings, excavations or disturbances of any property, real or personal, resulting therefrom. If any defect, deficiency or non-compliant item for which Project Co is responsible is found in the Highway Work by such investigations, the cost of such investigations and such Making Good shall be borne by Project Co; but if no such defect, deficiency or non-compliant item for which Project Co is responsible is found by such investigations, the said cost shall be borne by City.

35.6 Remedies Not Exclusive

- (a) The foregoing express warranties shall not deprive City of any action, right or remedy otherwise available to City at law or in equity for breach of any of the provisions of the Contract Documents by Project Co, and the periods referred to in this Article 35, shall not be construed as a limitation on the time in which City may pursue such other action, right or remedy.

35.7 [Reserved]

35.8 No Limitation

- (a) Subject to Section 9.7(f) of the Project Agreement, the performance of work by Other Contractors shall, except with respect to any damage caused by Other Contractors, limit the availability or terms of any warranty.

36. [RESERVED]

37. [RESERVED]

38. [RESERVED]

39. [RESERVED]

40. [RESERVED]

41. [RESERVED]

42. [RESERVED]

ANNEX A
LIST OF HIGHWAY DRAWINGS AND HIGHWAY SPECIFICATIONS

List of Highway Drawings

1. The list of Highway Drawings is comprised of the drawings listed in the sheets titled “INDEX” appearing in:
 - a. The drawings book titled “CONTRACT DRAWING BOOK 1 of 4, GWP 4320-06-00, EASTERN REGION, MAY 17, 2012”; and
 - b. The quantity sheets book titled “QUANTITY SHEETS, BOOK 1 OF 1, GWP 4320-06-00, EASTERN REGION, MAY 17, 2012”.

List of Highway Specifications

The list of Highway Specifications is comprised of the Special Provisions and Specifications listed in Part C – Special Conditions to Annex G of this Schedule 40 as further described below:

1. Special Provisions listed in the Table of Contents on or about pages 48 to 640;
2. General Special Provisions listed under the heading “D. GENERAL SPECIAL PROVISIONS” on or about pages 40 and 41;
3. Item Specific Special Provisions listed under the heading “E. ITEM SPECIFIC SPECIAL PROVISIONS” on or about pages 41 to 43;
4. Standard Special Provisions listed under the heading “F. STANDARD SPECIFICATIONS” on or about pages 43 and 44; and
5. Referenced Standard Specifications listed under the heading “G. REFERENCED STANDARD SPECIFICATIONS” on or about page 44 to 46.

**ANNEX B
HIGHWAY COMMISSIONING PROGRAM**

1. Project Co acknowledges that the Highway Commissioning as required under the Contract Documents is an integral and important part of the Highway Work and undertakes to provide City with any assistance deemed necessary by City, the Consultant and the Highway Commissioning Agent, if any is appointed by City, in respect of the Highway Commissioning, including ensuring that the Project Co Parties provide whatever assistance City, the Consultant and the Highway Commissioning Agent may reasonably require. Project Co shall be responsible for including in the Highway Construction Schedule the schedule for all Highway Commissioning as it relates to the Highway Substantial Completion Date. A portion of the Highway Commissioning may, as set out in the Highway Specifications in the Contract Documents, be completed prior to Substantial Completion of the Highway Work and completion of Highway Commissioning shall be required prior to Highway Final Completion, except to the extent expressly provided in the Contract Documents to occur following Highway Final Completion.
2. City, the Consultant and the Highway Commissioning Agent will attend, in accordance with the schedule for Highway Commissioning set out in the Highway Construction Schedule, performance tests and demonstrations carried out by Project Co, the Project Co Parties, manufacturers, and other agents, in accordance with the Contract Documents and as is mutually satisfactory to both parties.
3. Project Co and the Project Co Parties will submit copies of all As-Built Highway Drawings, records, manufacturer's written performance equipment data and specification sheets and Highway Shop Drawings to City and the Consultant, and as City and the Consultant may reasonably request, and cooperate, and make reasonable efforts to ensure systems designated for Highway Commissioning are complete and pre-tested as fully operational prior to scheduling tests and demonstrations with City, the Consultant and the Highway Commissioning Agent.

EXHIBIT 1 TO ANNEX B

Commissioning Requirements and Sign Off

Item	Comments	Sign-Off
<p>Enhanced Final Inspection of the Highway Work</p> <p>representation from</p> <ul style="list-style-type: none"> • CA (Consultant) • City of Ottawa • Project Co- 	<p>The Project Agreement is intended to allow City staff, and the Consultant to review the completed Highway Work and ensure that there are no safety issues and that correct signing is in place.</p> <p>It is also important to confirm that all legislative and regulatory requirements are in place such as regulations for stop signs or speed limit signs.</p> <p>Items for review include <u>but are not limited to:</u></p> <ul style="list-style-type: none"> • Signs (correct and supported by required regulations) • Pavement markings • Alignment • Signals- temporary removals and permanent in place • Bike Lanes/Ped sidewalks in conformance with contract • Utility company sign offs • Traffic signal operations • Illumination • PHM-125 signed • Commercial and private entrances • Any safety devices are correctly located and operational i.e. guide rail, illumination, active advance warning signs etc. • Final electrical inspection • All contractor testing documentation available and submitted to City • Zone painting restored • Maintenance activities completed • All guiderail installed and verification of mounting heights • Todd signs restored and replaced if damaged by contractor • Erosion control temporary devices removed • All claims resolved 	<p>No obvious safety issues are present on this section of highway and all legislative and regulatory requirements are in place.</p> <p>_____</p> <p>City Representative</p> <p>_____</p> <p>Construction Company ("Project Co") P.Eng.</p> <p>_____</p> <p>Contract Administrator Engineer. ("Consultant") (P.Eng.)</p>

ANNEX C
RISK ASSESSMENT GUIDELINES

The following chart illustrates the expected treatment of a number of possible changes in the Highway Work:

RISK ASSESSMENT GUIDELINE:

A = Project Co's Highway Design Contingency (PDC)
B = Unforeseen (City's cost)
C = Scope Variation (City's cost)
D = Core design functionality (City's cost)

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
Contamination is more widespread than shown in the Highway Drawings and Highway Specifications (is not properly inferable, readily apparent or readily discoverable from Highway Site Information).			X	
During the transition from stage 1 work to stage 2 work, temporary asphalt not identified in the quantity sheets or in the drawings is required in order to maintain traffic through a sub-stage lane shift.	X			
During the transition between stages relocation of temporary concrete barrier is required and is not identified in the Contract Documents.	X			
Concrete deck repair areas are laid out after the asphalt and waterproofing have been removed and the areas identified in the condition survey and drawings and specifications are the only areas that require repair however once the poor condition concrete is removed the actual areas are significantly larger than the estimated quantities. (excessive or unnecessary concrete removal).	X			
Concrete deck repair areas are laid out after the asphalt and waterproofing have been removed and areas are identified for repairs that were not indicated in the condition survey and drawings and specifications.		X		
There are discrepancies between the design and actual location of the existing edge of pavement white lines on Highway 417 resulting in: - Shifting of TCBs to the required offset - Obliterating existing edge of pavement white lines and reinstating to the required offset	X			

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
Construction entrance locations shown in the drawings and specifications restrict some construction activities and limit access to the construction area or require that specialized equipment or construction methods be used.	X			
Mass concrete slab required under any/all abutment footings over existing rock due to the contour of the existing rock. This extra mass concrete was required to ensure a level surface for the top of concrete footing slab.	X			
A proposed light pole shown on the electrical drawings conflicts with a proposed sewer on the drainage drawings requires the proposed light pole location to be adjusted.	X			
On-site conditions (evident visually or on existing utility location drawings) require longer electrical feeds to connect new work to existing electrical utility.	X			
Size (diameter) of proposed new manhole must be increased to accommodate proposed and / or existing sewers.	X			
Culvert length stated in the Quantity Sheets is different than the length determined from station to station and offset information.	X			
The footings for the noise barrier wall are designed for the shallow rock indicated in the geotechnical report. For a 50m section of wall (were no boreholes within this 50m section) the rock is deeper than indicated and requires a different footing design.		X		
When Project Co starts to lay out the work for a structure they find that the piers constructed under a previous contract (by a different contractor) are not at the required elevation for the work. Design of structure must be modified.			X	
When the end treatment for a barrier wall is laid out for installation it is found that the type of end treatment will not function in the location due to the site conditions (proximity to hazards); a new type of end treatment is required.				X
As designed, the proposed slope and size of the sewer does not achieve the recommended self-cleaning velocity. A change in the pipe size or number of manhole structures is required.				X

Ottawa Light Rail Transit Project

Note 1: Project Co shall be responsible to meet all codes, regulations, bylaws and standards to the same extent as per industry standard on similar projects in Ontario.

Note 2: These examples are illustrative examples of the types of Highway Design Issues which may be encountered, and the findings the Consultant might reasonably make as to whether the issues are properly characterized as Project Co Highway Design Issues. These examples are not intended to be definitive or complete.

Note 3: It is the intent that the Project Co Parties should also be aware of the Project Co Highway Design Contingency, as defined in Schedule 40 to the Project Agreement.

ANNEX D
LIST OF PROJECT CO PARTIES

Type of Trade	Name of Project Co Party
Construction Contractor	Dragados Canada, Inc. SNC-Lavalin Constructors (Pacific) Inc. EllisDon Corporation

ANNEX E
[RESERVED]

ANNEX F
LEGAL DESCRIPTION OF HIGHWAY SITE

ANNEX G
HIGHWAY SUPPLEMENTARY CONDITIONS

- Part A – MTO General Conditions
- Part B – Addenda
- Part C – Special Conditions

ANNEX H
HIGHWAY FINAL COMPLETION NOTICE

To: Director, Rail Implementation [●] day of [●],[●]
City of Ottawa
Finance Department, Supply Branch
100 Constellation Crescent
4th Floor West Tower
Ottawa, ON K2G 6J8

And To: Gord Perry, Project Manager
McIntosh Perry Consulting Engineers Ltd.
115 Walgreen Road
Carp, ON
K0A 1L0

Dear Sirs:

Re: Highway Final Completion Notice pursuant to a project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the 12th day of February, 2013 between the City of Ottawa (the “**City**”) and Rideau Transit Group General Partnership (“**Project Co**”)

This certifies that:

1. The Highway Work has been constructed to completion under (and in compliance with):
 - o the terms of the Project Agreement, and
 - o the Highway Commissioning and sign off sheet requirements have been met, and
 - o the Highway Commissioning and sign off sheet has been signed by all parties; and,
2. Without limiting item 1:
 - o all costs to others for labour, material, services, or otherwise incurred or suffered have been paid in full or otherwise resolved; and
 - o no liens by others exist on the date of this certificate as to any cost or matter as provided for under the Agreement; and
 - o Project Co’s Statutory Declaration CCDC 9A has been provided to the City; and
 - o Project Co’s WSIB Certificate of Clearance has been provided to the City; and

Project Co therefore requests that the Highway Final Completion Date be _____ .

[Signed by a Project Co representative with appropriate signing authority]