

## SCHEDULE 15

### TERMINATION PAYMENTS

#### SECTION A DEFINITIONS

##### A1. Capitalized Terms

A1.1 Capitalized terms used in this Schedule 15 have the meanings set out in the Project Agreement, unless otherwise expressed in this Schedule 15.

##### A2. Definitions

A2.1 In this Schedule 15, the following expressions have the following meanings:

- (a) **“Canada Call Redemption Feature”** means the right of an issuer of bonds (the **“Bonds”**) to redeem the Bonds at the greater of the remaining par value and a price calculated to provide a yield to maturity equal to the Government of Canada Yield (as defined below) plus a spread equal to the lesser of [REDACTED] of the Original Spread (as defined below) as of the date fixed for redemption or [REDACTED] basis points, where:
- (b) **“Capital Amount”** means:
- (i) the net present value, as of:
- (A) for purposes of Section B1 and Section B5 of this Schedule 15, the effective date of the Construction Period Termination or the Force Majeure Termination, as the case may be; and
- (B) for purposes of Section B6 of this Schedule 15, the earlier of the Scheduled Substantial Completion Date and Substantial Completion;
- of the aggregate Capital Payments (calculated using the Discount Rate) for the Project Financing plus the amount of the Substantial Completion Payment, but not in any event exceeding the total amount of Project Financing;
- (c) **“Construction Period Termination”** means termination of the Project Agreement by the City under Section S4.1(a) or Section S4.1(b) of the Project Agreement prior to Substantial Completion;
- (d) **“Force Majeure Capital Amount”** means the Capital Amount, exclusive of the amount of the Substantial Completion Payment;
- (e) **“Force Majeure Termination”** means termination of this Project Agreement by either Party under Section S6 of the Project Agreement on account of a Force Majeure Event;

- (f) **“Government of Canada Yield”** means on any date the average of the bid-side market yield to maturity and the offer side market yield to maturity (**“mid yield to maturity”**) for spot settlement that a non-callable Government of Canada bond would yield if issued in Canadian dollars in Canada with <sup>18(1)(c)(iii)</sup> of the principal amount paid on the date equal to the average remaining life of the Bonds; and where no Government of Canada bond has a maturity equal to such average remaining life, or a bond matures on such date but is not actively traded, then the **“Government of Canada Yield”** will be the linearly interpolated yield between two actively traded bonds with maturity dates closest to such date, the first of which shall have a maturity date prior to such date and the second of which shall have a maturity date after such date, as determined by Project Co and acceptable to the City acting reasonably and where the market yield for the Government of Canada bonds will be calculated as the average of the mid yields to maturity determined by two major independent financial institutions active in the Canadian bond market selected by Project Co and acceptable to the City acting reasonably;
- (g) **“OMR Period Termination”** means termination of this Project Agreement by the City under Section S4.1(a) or Section S4.1(b) of the Project Agreement on or after Substantial Completion;
- (h) **“Original Spread”** means the spread between the yield to maturity of the Bonds and the interpolated yield to maturity of a Government of Canada bond with a maturity equal to the average remaining life of the Bonds on the date of pricing;
- (i) **“Redemption Payment”** means the lesser of:
- (i) the amount actually required to redeem the Senior Debt (inclusive of hedging transactions, if applicable) in accordance with its terms; and
  - (ii) the amount that would be required to redeem the Senior Debt:
    - (A) to the extent that the Senior Debt is bond financing, if it were bond financing issued with a Canada Call Redemption Feature; and
    - (B) to the extent that the Senior Debt is floating rate bank financing, if it were issued with no prepayment premium, bonus or penalty except swap receipts or payments under a hedge permitted under the Project Agreement;
- (j) **“Senior Debt”** means, any part of the Project Financing that is debt financing. provided that the amount of debt financing shall not exceed the amount of Senior Debt indicated in or by Project Co’s Proposal adjusted for any increase or decrease in that amount that is:
- (i) attributable solely to movements in base rates and/or credit spreads between the Submission Date and the date hereof; and
  - (ii) in the case of an increase, communicated to the City within 14 days of the increase;

and, subject to the above limit means, in the event that the debt financing is initially raised in a currency other than Canadian dollars, the equivalent Canadian dollar amount that is:

- (i) if the amount raised is converted into Canadian dollars by a hedging instrument, the Canadian dollar equivalent, taking into account both the amount raised and the hedging instrument; or
  - (ii) if the amount raised is not converted into Canadian dollars by a hedging instrument, the equivalent in Canadian dollars at the time the financing is raised;
- (k) **“Termination by Project Co”** means termination of the Project Agreement by Project Co under Section S5 of the Project Agreement;
- (l) **“Termination for Convenience”** means termination of the Project Agreement by the City under Section S4.1(c) of the Project Agreement;
- (m) **“Termination for Relief Event”** means termination of the Project Agreement by the City under Section S4.1(e) of the Project Agreement; and
- (n) **“Termination Shortfall Amount”** means the amount of any shortfall between the Termination Payment calculated in accordance with Section B5.1, B6.1 or B7.1, as applicable, and the amount required to enable Project Co to fully redeem or repay the Senior Debt, including any makewhole amounts on early repayment of Senior Debt that are within the parameters of the Redemption Payment.

## SECTION B TERMINATION PAYMENTS

### B1. Construction Period Termination

B1.1 Upon a Construction Period Termination, the City shall pay to Project Co a Termination Payment equal to the Capital Amount less:

- (a) the reasonable cost to the City, established by competitive bidding process (and including out-of-pocket costs incurred by the City in relation to that process), of completing the Design and Construction, where the competitive bidding process is premised on:
  - (i) a design-build or conventional contract with progress payments and standard industry warranty;
  - (ii) use of as much of Project Co's Designs as is practicable; and
  - (iii) a duty on the part of the City to mitigate the cost of completing the Design and Construction and thereby minimize the amount deductible under this Section B1.1(a); and
- (b) liquidated damages of **18(1)(c)(iii)** to compensate the City for loss of its bargain.

## **B2. OMR Period Termination**

- B2.1 Upon an OMR Period Termination, the City shall by notice to Project Co elect to pay to Project Co either a Termination Payment under Section B3 of this Schedule 15 or a Termination Payment under Section B4 of this Schedule 15. If the City fails to make such election by notice to Project Co within 10 Business Days after an OMR Period Termination, then the City shall be irrevocably deemed to have elected to make a Termination Payment under Section B4 of this Schedule 15.
- B2.2 If the City elects to pay a Termination Payment under Section B3 of this Schedule 15, the City shall as soon as practicable thereafter (but in any event within 90 days) solicit expressions of interest in order to assess whether there are likely to be two suitable bidders (in which context, “suitable” shall be determined having regard to a bidder’s relevant practical experience, appropriate qualifications, technical competence and resources available to it, including financial resources and subcontracts, all having regard to the obligations to be performed under this Project Agreement). If the City fails to elicit within such 90 day period at least two bona fide expressions of interest from suitable potential bidders, it shall immediately re-elect to pay a Termination Payment under Section B4 of this Schedule 15.
- B2.3 Between the time of the OMR Period Termination and the making of the Termination Payment, the City shall make advance payments to Project Co against the Termination Payment in accordance with and subject to the following:
- (a) the advance payments shall be made monthly, at the times and in the amounts that would have been payable by the City as the Capital Payment had this Project Agreement not been terminated; and
  - (b) if the City reasonably concludes that making or continuing to make the advance payments may result in a negative net balance owing by the City on account of the Termination Payment, then the City shall have no obligation to make or continue to make (as the case may be) the advance payments.
- B2.4 In the event the City, pursuant to clause (b), ceases to make or continue to make (as the case may be) the advance payments, then the City shall immediately re-elect to pay a Termination Payment under Section B4 of this Schedule 15, unless either (i) Project Co agrees otherwise, or (ii) the bidding process has by the date of such cessation already progressed to receipt of final bids.

## **B3. Payment Based on Sale of Contractual Rights**

- B3.1 If upon an OMR Period Termination the City elects a Termination Payment under this Section B3, then the following provisions shall apply:
- (a) the City shall within six months after the OMR Period Termination obtain at least two bona fide, fully committed bids, each from a suitable bidder (having regard to the same criteria as set out in Section B2 of this Schedule 15), for acquiring all rights and obligations (both present and future) of Project Co under this Project Agreement as if this Project Agreement had not been terminated;

- (b) the City shall conduct the bidding process so as to obtain the maximum cash purchase price (but otherwise, to the extent practicable, generally in accordance with its usual procurement processes), and shall select the winning bidder accordingly;
- (c) the City shall, as soon as practicable (having regard to clause (a)), implement and complete the bidding process and enter into an agreement with, and collect the purchase price from, the winning bidder;
- (d) upon receiving the purchase price from the winning bidder, the City shall pay to Project Co a Termination Payment consisting of:
  - (i) the purchase price received by the City from the winning bidder; less
  - (ii) the City's reasonable costs reasonably incurred in establishing and conducting the bidding process and entering into the new agreement;
- (e) if the City fails to:
  - (i) within six months after the OMR Period Termination, obtain two bids in accordance with clause (a); or
  - (ii) within 12 months after the OMR Period Termination, enter into an agreement with, and collect the purchase price from, the winning bidder;then the City shall be deemed to have elected to make a Termination Payment under Section B4 of this Schedule 15 rather than under this Section B3;
- (f) subject to clause (g), no bid shall be capable of acceptance by the City unless it would result in an amount greater than zero payable to Project Co under Section B3 of this Schedule 15, having regard to any advance payments made by the City pursuant to Section B2 of this Schedule 15; and
- (g) if acceptance of the winning bid would not result in an amount greater than the amount described in clause (f), the City may accept or not accept the bid, but in either event the City shall be deemed to have re-elected to pay a Termination Payment under Section B4 of this Schedule 15 in lieu of a Termination Payment under Section B3 of this Schedule 15.

**B4. Payment of Fair Market Value**

- B4.1 If upon an OMR Period Termination the City elects a Termination Payment under this Section B4, or if by Section B2 or Section B3.1(e) or B3.1(g) of this Schedule 15 is deemed to have elected a Termination Payment under this Section B4, then the following provisions shall apply:
- (a) the City and Project Co shall seek to arrive at agreement on the fair market value of Project Co's rights and obligations under this Project Agreement, calculated:

- (i) as of the date of the OMR Period Termination and as if this Project Agreement had not been terminated and no Termination Event had occurred or was imminent;
  - (ii) on the assumption that the purchaser would be responsible for curing any existing default (or, in the case of an Incurable Default, taking the remedial action contemplated by Section S2.1(l)(iii) of the Project Agreement by Project Co under the Project Agreement;
  - (iii) on the assumption of a willing and qualified purchaser and Project Co as a willing vendor; and
  - (iv) having regard to the future Monthly Payments expected for the duration of the OMR Period, the costs of curing or taking required remedial action in respect of any existing default, and the projected costs of carrying out all obligations during the OMR Period without incurring Payment Adjustments, including a reasonable allowance for contingencies;
- (b) if the City and Project Co have not within 30 days after the election (or deemed election) arrived at agreement under clause (a), then the fair market value of Project Co's rights and obligations under this Project Agreement shall be determined by the Dispute Resolution Procedure, applying the same assumptions as set out in clause (a); and
- (c) upon the fair market value of Project Co's rights and obligations under this Project Agreement being determined under clause (a) or clause (b), the City shall pay to Project Co as a Termination Payment an amount consisting of the fair market value so determined, less:
- (i) the City's reasonable costs reasonably incurred of calculating the fair market value; and
  - (ii) the City's reasonable costs, or the City's reasonable pre-estimate thereof, of selecting and entering into a new agreement with a new provider of services in lieu of Project Co's performance of the OMR under this Project Agreement.

**B5. Force Majeure Termination - Construction Period**

B5.1 Upon a Force Majeure Termination during the Construction Period, the City shall pay to Project Co a Termination Payment equal to the lesser of:

- (a) the Capital Amount less any Capital Payments made under Section N1.3 of the Project Agreement; and
- (b) the amount actually expended (including any irrevocable commitment to purchase and pay for materials not readily returnable or readily deployable other than on the Design and Construction provided arrangements are made, satisfactory to the City acting reasonably, to transfer to the City ownership of such materials free and clear of any security interests) in furtherance of the design, build and financing of the Project by Project Co,

less, in either case, insurance proceeds, if any, that would be payable to Project Co, pursuant to insurance coverages required to be obtained by Project Co pursuant to Section M of the Project Agreement, and as a result of events occurring prior to the Force Majeure Termination and having a bearing on the Termination Payment determined in accordance with this Section B5, assuming that the applicable insurance policy was compliant with the requirements of Section M of the Project Agreement and Schedule 11 - Insurance Requirements, that Project Co had fully complied with all terms of the applicable insurance policy and had made the required disclosures to the insurer, and assuming that the insurer is capable of paying; and less all other insurance proceeds received or to be received by Project Co as a result of events occurring prior to the Force Majeure Termination and not applied by Project Co against the loss for which the insurance was obtained.

B5.2 To the extent that the Termination Payment calculated in accordance with Section B5.1 results in a Termination Shortfall Amount, the Termination Payment will be increased by the Termination Shortfall Amount.

**B6. Force Majeure Termination - OMR Period**

B6.1 Upon a Force Majeure Termination during the OMR Period, the City shall pay to Project Co a Termination Payment equal to the Force Majeure Capital Amount less:

- (a) all principal repaid on the Senior Debt portion of the Project Financing prior to the Force Majeure Termination plus any amounts that could have been repaid based on any cash, cash equivalents or reserves (including loans or investments by Project Co) available for repayment of or held as security for the Project Financing as at the date of the Force Majeure Termination (but excluding reserves in the form of surety bonds or letters of credit or similar instruments unless they are secured by cash, financial instruments or securities; and further provided that if any surety bonds, letters of credit or similar instruments have been drawn and the proceeds used, prior to the Force Majeure Termination, to repay principal on the Senior Debt portion of the Project Financing, such principal repayments shall not be included under this clause (a) to the extent that the reimbursement obligations remain outstanding);
- (b) all distributions on or return of Equity (including, in the case of subordinated debt, all payments of principal and interest) made prior to the Force Majeure Termination, and all such distributions that Project Co, immediately prior to the Force Majeure Termination, could have made (on the basis of free cash in hand and any cash equivalents, investments, or reserves accessible by Project Co) but had not yet made; but not exceeding, in aggregate, the amount of the Equity; and
- (c) all insurance proceeds, if any, that would be payable to Project Co, pursuant to insurance coverages required to be obtained by Project Co pursuant to Section M of the Project Agreement, and as a result of events occurring prior to the Force Majeure Termination and having a bearing on the Termination Payment determined in accordance with this Section B6, assuming that the applicable insurance policy was compliant with the requirements of Section M of the Project Agreement and Schedule 11 - Insurance Requirements, that Project Co had fully complied with all terms of the applicable insurance policy and had made the required disclosures to the insurer, and assuming that the insurer is capable of

paying; and less all other insurance proceeds received or to be received by Project Co as a result of events occurring prior to the Force Majeure Termination and not applied by Project Co against the loss for which the insurance was obtained.

B6.2 To the extent that the Termination Payment calculated in accordance with Section B6.1 results in a Termination Shortfall Amount, the Termination Payment will be increased by the Termination Shortfall Amount.

## **B7. Termination for Convenience or by Project Co**

B7.1 Upon a Termination for Convenience, a Termination for Relief Event or a Termination by Project Co, under S5.1(a), (b) or (d) of the Project Agreement, the City shall pay to Project Co a Termination Payment calculated as follows:

- (a) the Redemption Payment; plus (without duplication); and
- (b) Project Co's reasonable damages (including for loss of its bargain and amounts payable to Equity Providers) calculated having regard to the principles set out in Section R3 of the Project Agreement; less
- (c) if the Termination for Convenience or Termination by Project Co occurs during the Construction Period, any amount of the Project Financing that has been drawn or, in the case of bond financing, issued, whether or not available to Project Co, but not yet expended on the Project.

B7.2 For greater certainty, the intention of clauses (a) and (c) is to ensure that the payment required to be made by the City under Section B7.1 (without taking into account any amounts payable under clause (b)) will be an amount sufficient to enable Project Co (having regard to any part of the Project Financing drawn or issued but not yet expended on the Project) to fully repay the Project Financing, provided any premiums on early repayment are within the parameters indicated within the definition of "Redemption Payment".

## **SECTION C MISCELLANEOUS**

### **C1. Set-off Against Termination Payments**

C1.1 The City may set off against any Termination Payment the amounts of any Payment Adjustments triggered prior to the termination and not set off against a Payment; provided that where Section B7 of this Schedule 15 applies the City shall be entitled to claim a set-off only to the extent that the net Termination Payment is not reduced below the amount of the Redemption Payment.

### **C2. Negative Amounts**

C2.1 If the amount of the Termination Payment calculated under any of Sections B1, B3 or B4 of this Schedule 15, is a negative number, the City shall be entitled to claim that amount (stated as a positive number) from Project Co.

### **C3. Rescue Financing**



C3.1 Notwithstanding the definitions of “Capital Amount” and “Force Majeure Capital Amount” in Section A2 of this Schedule 15 and the definition of “Project Financing” in Schedule 1 – Definitions and Interpretation, if the City expressly and by express reference to this Section C3 so agrees, in consideration of Project Co raising financing in addition to the amount of the Project Financing in order to enable completion of the Project, then the amount of such additional financing up to a maximum of <sup>18(1)(c)(iii)</sup> of the initial amount of the Senior Debt portion of the Project Financing shall be known as “Rescue Financing”, and in that event:

- (a) the Capital Amount and the Force Majeure Capital Amount shall be adjusted so as to include the value of the Rescue Financing; and
- (b) for the purposes of the Redemption Payment, the Rescue Financing shall be deemed to be part of the Senior Debt portion of the Project Financing.

#### **C4. Delivery of Information**

C4.1 Upon any termination of this Project Agreement, each Party shall as soon as practicable deliver to the other all information within the possession of, or that thereafter from time to time comes into the possession of, that Party that is relevant to the determination and calculation of the Termination Payment.

C4.2 Upon the initial closing of the Senior Debt portion of the Project Financing or the closing of any Qualifying Refinancing, Project Co shall deliver to the City particulars of:

- (a) the amount of the Project Financing;
- (b) the basis for determining the amount by which the Senior Debt portion of the Project Financing by its terms can be redeemed in advance of its maturity;
- (c) any hedging transactions material or potentially material to any Termination Payment that may in the future become payable under this Project Agreement; and
- (d) the Original Spread as defined in the definition of “Canada Call Redemption Feature” in Section A2 of this Schedule 15 as well as the benchmark yield to which the Original Spread is applied, including full details on how it was determined;

C4.3 and after the initial closing of the Senior Debt portion of the Project Financing, Project Co shall deliver to the City particulars of any material changes in or additions to the information delivered under Section C4.2(a) of this Schedule 15, within five Business Days of those changes or additions being effected.