

SCHEDULE 6

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the 9th day of May, 2014

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

(the “**Region**”)

AND

GrandLinq GP, a general partnership of Plenary GrandLinq GP Inc., Meridiam Infrastructure Waterloo LRT ULC, Aecon GrandLinq GP Inc., Kiewit Waterloo Investors Corp. and Keolis Waterloo General Partner Inc., existing under the laws of Alberta

(“**Project Co**”)

AND

Altus Group Limited, a corporation incorporated under the laws of Ontario

(the “**Independent Certifier**”)

WHEREAS:

- A. The Region and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

NOW THEREFORE in consideration of the mutual covenants and agreements of the PA Parties and the Independent Certifier herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PA Parties and the Independent Certifier covenant and

TORONTO: 294415/8

agree as follows:

1. DEFINITIONS

1.1 Definitions

(a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

(i) **“Certification Services”** means:

- (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
- (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
- (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.

(ii) **“Certification Services Variation”** is any change to the Certification Services.

(iii) **“Conflict of Interest”** means any situation or circumstance (including in connection with the Project Agreement) where the Independent Certifier has contractual or other obligations to any of the PA Parties or any member of the Project Co Group that could or could be seen to compromise, impair or be incompatible with the objective, unbiased and impartial exercise of independent judgment by the Independent Certifier.

(iv) **“Contract Material”** means all material:

- (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
- (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).

(v) **“Contribution Agreement”** means the agreement to be entered into between Her

TORONTO: 294415/8

Majesty the Queen in right of Canada, represented by the Minister of Transport, Infrastructure and Communities and the Region in respect of the Project.

- (vi) “**Earned Value**” has the meaning given in Schedule 21 – Construction Period Payments.
- (vii) “**Eligible Costs (Canada)**” has the meaning given thereto in the Contribution Agreement.
- (viii) “**Eligible Costs (Ontario)**” has the meaning given thereto in the Transfer Payment Agreement.
- (ix) “**Equivalent Federal Funding Certificate**” means the certificates which are to be delivered under the Contribution Agreement which are anticipated to be substantially similar in form and content to the Schedule G.2 Certificate and the Schedule G.4 Certificate which are required to be delivered under the Transfer Payment Agreement.
- (x) “**Fee**” means the fees payable by the Region and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
- (xi) “**Final Payment**” has the meaning given in the Transfer Payment Agreement.
- (xii) “**Funding Agreement Parties**” means Her Majesty the Queen in right of Canada, represented by the Minister of Transport, Infrastructure and Communities and its authorized agents and Her Majesty the Queen, represented by the Minister of Transportation for the Province of Ontario and its authorized agents.
- (xiii) “**Holdback**” has the meaning given in the Transfer Payment Agreement.
- (xiv) “**HST**” means the value-added tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- (xv) “**IC Construction Cost Confirmation Certificate**” has the meaning given in Schedule 21 – Construction Period Payments.
- (xvi) “**IC Milestone Payment Authorization Certificate**” has the meaning given in Schedule 21 – Construction Period Payments.
- (xvii) “**Independent Engineer**” means the Independent Certifier under the Transfer Payment Agreement.
- (xviii) “**Intellectual Property**” means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents,

TORONTO: 294415/8

copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.

- (xix) “**Milestone**” has the meaning given in Schedule 21 – Construction Period Payments.
- (xx) “**Milestone Payment Application**” has the meaning given in Schedule 21 – Construction Period Payments.
- (xxi) “**Milestone Zero Notice**” has the meaning given in Schedule 21 – Construction Period Payments.
- (xxii) “**PA Parties**” means both the Region and Project Co, and “**PA Party**” means either the Region or Project Co, as the context requires.
- (xxiii) “**Partial Payment**” has the meaning given in Schedule 21 – Construction Period Payments.
- (xxiv) “**Project Agreement**” means that certain project agreement made on or about the date hereof between the Region and Project Co with respect to the design, construction, financing, maintenance and rehabilitation of the System and the Public Infrastructure.
- (xxv) “**Project Co Officer Progress/Milestone Payment Certificate**” has the meaning given in Schedule 21 – Construction Period Payments.
- (xxvi) “**Project Milestone**” and “**Project Milestone Payment**” have the respective meanings given in the Transfer Payment Agreement.
- (xxvii) “**Schedule G.2 Certificate**” means the “Certificate from the Independent Engineer” to be given by the Independent Certifier in respect of Project Milestone Payments in accordance with Schedule G of the Transfer Payment Agreement.
- (xxviii) “**Schedule G.4 Certificate**” means the “Solemn Declaration of Substantial Completion” certificate to be given by the Independent Certifier in respect of “Substantial Completion” (as defined in the Transfer Payment Agreement) in accordance with Schedule G of the Transfer Payment Agreement.
- (xxix) “**Scheduled Milestone Date**” has the meaning given in Schedule 21 – Construction Period Payments.
- (xxx) “**Transfer Payment Agreement**” means the agreement dated March 19, 2014, between Her Majesty the Queen represented by the Ontario Ministry of Transportation and the

TORONTO: 294415/8

Region in respect of the Project.

2. INTERPRETATION

2.1 Interpretation

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
- (i) words denoting the singular number include the plural and vice versa;
 - (ii) words denoting individuals include corporations and vice versa;
 - (iii) headings are for convenience only and do not affect interpretation;
 - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
 - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
 - (vii) words denoting any gender include all genders;
 - (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
 - (ix) a reference to “\$” is to Canadian currency;
 - (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
 - (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
 - (xii) unless otherwise indicated, all time periods will be strictly construed.

TORONTO: 294415/8

2.2 Obligations and Exercise of Rights by PA Parties

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project or which might result in a Conflict of Interest arising.
- (d) The Independent Certifier shall make such observations and evaluations of any Design and Construction Works and any Public Infrastructure Work pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Section 9.4 and 9.5 of this Independent Certifier Agreement.

3.2 Acknowledgement of Independent Certifier

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement, the Transfer Payment Agreement and a draft of the Contribution Agreement.

3.3 Standard of Care

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to

TORONTO: 294415/8

the Project.

3.4 Duty of Independent Judgment

- (a) In exercising its Certification Services, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
 - (ii) act reasonably and professionally;
 - (iii) act in a timely manner:
 - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
 - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
 - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services. The Independent Certifier represents and warrants that all information provided and/or submitted to the PA Parties and the Funding Agreement Parties is true and accurate, and prepared in good faith to the best of his or her skill, judgment and knowledge.
- (d) The Independent Certifier acknowledges that all Certification Services, Contract Material and all determinations, findings, reports, certificates and other information delivered by the Independent Certifier to the Region pursuant to the Project Agreement may be relied upon by each of the Funding Agreement Parties, and that the Independent Certifier shall owe each an equal duty of

TORONTO: 29441518

care as is owed to the Region hereunder, notwithstanding the fact that neither of the Funding Agreement Parties are a party to this Independent Certifier Agreement and/or the Project Agreement. The Independent Certifier will confirm the foregoing directly to either Funding Agreement Party, if requested by the Region. The Independent Certifier shall maintain accurate and complete records related to all work performed under this Agreement for at least seven (7) years after the end of this Independent Certifier Agreement and such records will be made available to the Funding Agreement Parties upon request and reasonable notice.

3.5 Authority to Act

- (a) The Independent Certifier:
 - (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
 - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

3.6 Knowledge of the PA Parties' Requirements

- (a) The Independent Certifier warrants that:
 - (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
 - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
 - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
 - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at the System and Lands including restrictions on any such access or protocols that are required; and

TORONTO: 294415/8

- (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

3.7 Co-ordination and Information by Independent Certifier

- (a) The Independent Certifier must:
 - (i) fully cooperate with the PA Parties;
 - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
 - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties;
 - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party; and
 - (v) provide a copy of the Contract Material to each of the Funding Agreement Parties at the same time as it is provided to the PA Parties. In respect of such Contract Material, the Funding Agreement Parties may make inquiries of the Independent Certifier and request further investigation or clarification in connection with, and subject to, the Transfer Payment Agreement and Contribution Agreement.

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
 - (i) at the date of this Independent Certifier Agreement, no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as technical advisor to the Lender or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
 - (ii) if, during the term of this Independent Certifier Agreement, any Conflict of Interest or risk of Conflict of Interest arises, the Independent Certifier will notify the PA Parties immediately in writing of the Conflict of Interest or risk of Conflict of Interest and take such steps as may be required by either of the PA Parties to avoid or mitigate the Conflict

TORONTO: 294415/8

of Interest or risk of Conflict of Interest.

3.9 Independent Certifier Personnel

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program, the OMSF and Test Track Commissioning Program and the Final Commissioning Program shall:
 - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
 - (ii) have demonstrated competence in the commissioning of comparable facilities and in having completed or monitored the commissioning of a comparable light rail transit system;
 - (iii) have an understanding of the appropriate standards, guidelines and policies related to commissioning for light rail transit systems and related fixed facilities, as well as other applicable transit commissioning standards; and
 - (iv) have an understanding of any documentation to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but any pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish the Region with evidence satisfactory to the Region of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program, the OMSF and Test Track Commissioning Program and the Final Commissioning Program.

3.10 Minimize Interference

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Design and Construction Works and Public Infrastructure Works.

TORONTO: 29441518

4. ROLE OF THE PA PARTIES

4.1 Assistance

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

4.2 Instructions in Writing

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

4.3 Information and Services

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to determine (i) whether Substantial Completion and Final Completion have occurred, (ii) whether OMSF/Test Track Readiness Completion has occurred, (iii) whether the Milestone Payment Eligibility Threshold has been met; and (iv) whether the Milestone Payment Eligibility Requirements have been met in connection with each Milestone Payment, and shall provide copies of all such information, documents and particulars to the other party hereto.

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
 - (i) the Independent Certifier must give notice in writing to the Project Co Representative or the Region Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
 - (ii) Project Co or the Region, as the case may be, must arrange the provision of the required information, documents or particulars.

TORONTO: 294415/8

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Lands, the System, the Public Infrastructure, the Design and Construction Works and the Public Infrastructure Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
 - (i) observance of the reasonable rules of Project Co as to safety and security for the Lands, the System, the Public Infrastructure, the Design and Construction Works and the Public Infrastructure Works;
 - (ii) not causing unreasonable delay to the carrying out of the Design and Construction Works or the Public Infrastructure Works by reason of its presence at the Lands, the System, the Public Infrastructure and the Design and Construction Works and the Public Infrastructure Works; and
 - (iii) not causing any damage to the Lands, the System, the Public Infrastructure, the Design and Construction Works or the Public Infrastructure Works.

4.6 PA Parties Not Relieved

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. CERTIFICATION QUALITY PLAN

5.1 Certification Quality Plan

- (a) The Independent Certifier must:
 - (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the

TORONTO: 294415/8

Independent Certifier’s quality assurance accreditation, and is otherwise satisfactory to each of the Region Representative and the Project Co Representative;

- (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the Region Representative and the Project Co Representative;
- (iii) if satisfactory to each of the Region Representative and the Project Co Representative, implement such certification quality plan; and
- (iv) if not satisfactory to each of the Region Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the Region Representative and the Project Co Representative, and implement it if satisfactory to each of the Region Representative and the Project Co Representative.

5.2 Certification Quality Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
 - (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
 - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the Region Representative or the Project Co Representative.

6. SUSPENSION

6.1 Notice

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
 - (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
 - (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

TORONTO: 294415/8

6.2 Costs of Suspension

- (a) The Independent Certifier will:
- (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
 - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

6.3 Recommencement

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

7. INSURANCE AND LIABILITY

7.1 Independent Certifier's Insurance

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
- (i) professional liability insurance:
 - (A) in the amount of \$2,000,000 per claim and \$4,000,000 in the aggregate, a deductible of not more than \$25,000 per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
 - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
 - (ii) commercial general liability insurance in the amount of \$5,000,000 per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$5,000 per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the

TORONTO: 294415/8

renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

7.2 Workers' Compensation Insurance

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

8. PAYMENT FOR SERVICES

8.1 Payment of Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay one-half of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overheads and profit, all labour and materials, insurance costs, costs and expenses, disbursements (including printing and reproduction charges, delivery charges and expenses for travel, including hospitality, food, incidental expenses and accommodations) and all other overhead including any fees or other charges required by law to perform the Certification Services. For clarity, all travel expenses must be included in the Fee. The Independent Certifier will not be reimbursed for any hospitality, food or incidental expenses incurred, including meals associated with travel and overnight stays.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$100,000 is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.
- (e) The parties hereto acknowledge and agree that the Region shall have the right to amend this Agreement as shall be reasonable required to reflect the final terms of the executed and delivered Contribution Agreement (the “**Federal Funding Agreement Amendments**”). In the event that the Federal Funding Agreement Amendments impose a material and substantial increase in the Certification Services, the Independent Certifier shall have the right to request an increase in the Fee payable hereunder. The Independent Certifier shall deliver to Project Co and the Region a written notice of the proposed increase in the Fee (a “**Fee Increase Request**”). The Fee Increase Request shall include (a) the steps the Independent Certifier will take to implement the Federal

TORONTO: 294415/8

Funding Agreement Amendments, (2) any impact on the performance of the Certification Services, (3) any impact on the costs and expenses of the Independent Certifier in the performance of such additional Certification Services, each, in such detail as is reasonable and appropriate in the circumstances. Project Co and the Region shall consider such Fee Increase Request and within 30 days of the receipt of such Fee Increase Request shall determine, in their sole discretion having regard to the materials submitted and the Federal Funding Agreement Amendments, the appropriate amount of any increase in the Fee. The Region shall be solely responsible to pay any such approved increase in the Fee resulting from the approved Fee Increase Request.

9. CERTIFICATION SERVICES VARIATIONS

9.1 Notice of Certification Services Variation

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
 - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
 - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the Region Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

9.2 No Adjustment

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

TORONTO: 29441518

9.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

9.4 Certification Services Variation Procedure

- (a) The Region Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the Region Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the Region Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

9.5 Cost of Certification Services Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
 - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
 - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Region Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

TORONTO: 29441518

10. TERM AND TERMINATION

10.1 Term

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
 - (i) the completion of the Design and Construction Works and Public Infrastructure Works and the performance of the Certification Services set forth herein; or
 - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
 - (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

10.3 Termination for Breach

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

10.4 Termination for Financial Difficulty or Change in Control

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
 - (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
 - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

TORONTO: 294415/8

10.5 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

10.6 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
- (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
 - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

10.7 Procedure upon Termination

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4 or 10.5 or otherwise), the Independent Certifier must:
- (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
 - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
 - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

TORONTO: 294415/8

10.8 Effect of Termination

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

10.9 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11 and 12.7 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
- (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);
 - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
 - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

TORONTO: 29441518

11.2 Independent Certifier to Save PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
 - (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
 - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.3 Conduct of Claims

- (a) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix D – Conduct of Claims to this Independent Certifier Agreement.

12. GENERAL

12.1 Entire Agreement

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

12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and

TORONTO: 29441518

any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.

- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

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

12.4 Notices

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

If to the Region:

The Regional Municipality of Waterloo
150 Frederick Street, 4th Floor
Kitchener, Ontario N2G 4J3

Fax: (519) 575-4494
Attn.: Lisa Buitenhuis, Acting Director, Procurement
and Supply Services

TORONTO: 2944158

with a copy to the Region Representative at:

The Regional Municipality of Waterloo
50 Queen Street North, Suite 830
Kitchener, Ontario N2H 6P4

Fax: (519) 745-4040
Attn: Darshpreet Bhatti, Director, Rapid Transit

with a copy to, solely for the purposes of Section 3.7
(a)(v):

Ministry of Transportation
777 Bay Street, 30th Flr.
Toronto, Ontario M7A 2J8

Fax: (416) 585-7343
Attn: Director, Transit Policy

If to Project Co:

Plenary GrandLinq GP Inc.
Suite 2000-400 Burrard Street
Vancouver, British Columbia
V6C 3A6

Fax: (604) 638-3906
Attn.: Chief Financial Officer

with a copy to:

Meridian Infrastructure Waterloo LRT ULC
357 Bay Street, Suite 501
Toronto, Ontario
M5H 2T7

Fax: (647) 347-8857
Attn.: Elisabeth Hivon

TORONTO: 29441518

If to the Independent Certifier:

Altus Group Limited
Cost Consulting & Project Management
33 Yonge Street, Suite 500
Toronto, Ontario M5E 1G4

Fax: (416) 641-9501
Attn.: Monica Sechiari, Manager IC Services

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the

TORONTO: 29441518

transmission of such notice was successful.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion (including, in respect of the Region, if so required pursuant to either the Transfer Payment Agreement or the Contribution Agreement); and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

12.6 Governing Laws and Jurisdictions

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

12.7 Confidentiality

- (a) The Independent Certifier must ensure that:
 - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification

TORONTO: 294415/8

Services without prior written approval of the PA Parties; and

- (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

12.8 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.8(b).

12.9 Amendment

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the PA Parties (provided that, in respect of the Region, such agreement may be subject to its obligations under either the Contribution Agreement or the Transfer Payment Agreement and require the consent of a Funding Agreement Party) and the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent

TORONTO: 29441518

Certifier Agreement.

12.10 Severability

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

12.11 Enurement

- (a) This Independent Certifier Agreement shall enure to the benefit of, and be binding on, each of the parties and their respective successors and permitted transferees and assigns.

12.12 Counterparts

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

12.13 Copyright Notice

- (a) The Parties acknowledge that The Regional Municipality of Waterloo is the exclusive owner of the copyright in the Project Agreement and this Independent Certifier Agreement.

TORONTO: 29441518

IN WITNESS WHEREOF the parties have executed this Independent Certifier Agreement as of the date first above written.

THE REGIONAL MUNICIPALITY OF WATERLOO

Per:

Name: Ken Seiling
Title: Regional Chair

I/We have authority to bind the corporation.

TORONTO: 29441518

GRANDLINQ GP, by its general partners, PLENARY GRANDLINQ GP INC., MERIDIAM INFRASTRUCTURE WATERLOO LRT ULC, AECON GRANDLINQ GP INC., KIEWIT WATERLOO INVESTORS CORP. and KEOLIS WATERLOO GENERAL PARTNER INC.

PLENARY GRANDLINQ GP INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

MERIDIAM INFRASTRUCTURE WATERLOO LRT ULC

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

AECON GRANDLINQ GP INC.

Per: _____
Name:
Title:

TORONTO: 29441518

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

KIEWIT WATERLOO INVESTORS CORP.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

KEOLIS WATERLOO GENERAL PARTNER INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

TORONTO: 29441518

ALTUS GROUP LIMITED

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

TORONTO: 294415/8

APPENDIX A

CERTIFICATION SERVICES

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall provide the following services:

- (a) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Design and Construction Works and to provide an opinion in the event of a Dispute related to the development of the design.
- (b) Receive and monitor each Public Infrastructure Component Acceptance Certificate and the Final Public Infrastructure Works Acceptance Certificate in order for the Independent Certifier to be informed as to the progress of the Public Infrastructure Works and to determine any Dispute relating to Public Infrastructure Works to the extent contemplated in Schedule 27 - Dispute Resolution Procedure of the Project Agreement.
- (c) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Design and Construction Works.
- (d) Review information relating to Delay Events and Compensation Events. Where a Delay Event relates, in whole or in part, to the Public Infrastructure Works, the Independent Certifier shall take into consideration the views of the Region Engineer when conducting such review.
- (e) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations and Estimates, in each case, relating to the Design and Construction Works, claims for extension of time and compensation and consultation with the relevant party.
- (f) In accordance with Section 11.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee.
- (g) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Final Commissioning Program.
- (h) Review the draft OMSF and Test Track Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the OMSF and Test Track Commissioning Program.
- (i) Monitor the Commissioning Tests (as indicatively described in Schedule 14 – Commissioning to the Project Agreement) and other tests, including re-tests and demonstrations, to be performed as set out in the OMSF and Test Track Commissioning Program and in the Final Commissioning

TORONTO: 294415/8

Program or as otherwise required for Project Co to achieve OMSF/Test Track Readiness Completion, Substantial Completion and Final Completion.

- (j) Prior to any certification of the Design and Construction Works (which, for clarity, includes all OMSF/Test Track Work to be completed prior to the Scheduled OMSF/Test Track Readiness Completion Date), consider the views and comments of both Project Co and the Region in relation to the satisfaction of the conditions for such certification, and consider and take into account any ongoing Disputes between the Parties prior to any such certification.
- (k) Conduct inspections of the Design and Construction Works as necessary for the Independent Certifier to be satisfied that the Design and Construction Works are proceeding in accordance with the requirements of the Project Agreement.
- (l) Review relevant documentation, including the Design Development Submittals relating to the Design and Construction Works, certificates and approvals, Permits, Licences, Approvals and Agreements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement in relation to the Design and Construction Works.
- (m) Upon receipt of notice from Project Co requesting the issuance of a OMSF/Test Track Readiness Certificate, Substantial Completion Certificate or Final Completion Certificate, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (n) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate set out in Section (m) of this Appendix A have been completed, re-inspect the Design and Construction Works or re-consider the matters specified to be performed, and repeat the procedures in Section (m) of this Appendix A until the issuance of the applicable certificate.
- (o) Monitor the progress of the Design and Construction Works and the Public Infrastructure Works and monitor payments for Construction Costs and Non-Construction Costs, and in connection therewith and with the requirement to ensure that the requirements of Funding Agreement Parties have been satisfied, receive and review all relevant documentation, including, all Lender Advance Confirmations.
- (p) In connection with each Milestone Payment and, if applicable, Partial Payment, (i) review of each Milestone Payment Application (including, for clarity, all attachments and documentation

TORONTO: 29441518

appended thereto and delivered in connection therewith pursuant to the requirement set forth in Schedule 21 – Construction Period Payments to the Project Agreement), together with such other information, reports and documentation as the Independent Certifier reasonably requires from Project Co to verify that the Earned Value that has been claimed by Project Co in each Milestone Payment Application has in fact been achieved, and (ii) conduct such reviews and perform such inquiries and investigations, and inspections as are necessary for the Independent Certifier to be able to verify the progress of the Design and Construction Works and the Public Infrastructure Works are in accordance with the Works Schedule and Earned Value Requirements.

- (q) Review the Milestone Payment Eligibility Date Notice delivered pursuant to Schedule 21 – Construction Period Payments to the Project Agreement together with the Project Co Officer Progress/Milestone Payment Certificate delivered together therewith, and assess the construction progress reports and all other documentation previously submitted and submitted with the Milestone Eligibility Date Notice and deliver the Milestone Zero Notice and the IC Construction Cost Confirmation Certificate.
- (r) Prior to issuing the Milestone Zero Notice confirming that the requirements for achievement of Milestone Payment Eligibility Threshold have been met, consider the views and comments of Project Co and the Region in relation to achievement of such requirements, and consider and take into account any ongoing Disputes between the Parties prior to any such certification.
- (s) Prior to issuing any IC Milestone Authorization Certificate for a particular Milestone, consider the views and comments of both Project Co and the Region in relation to the satisfaction of such requirements, and consider and take into account any ongoing Disputes between the Parties prior to any such certification.
- (t) Upon receipt of (i) a Milestone Eligibility Date Notice and (ii) each Milestone Payment Application, in each case, pursuant to Schedule 21 – Construction Period Payments to the Project Agreement, consider such request and, within the time period set out in Schedule 21 – Construction Period Payments:
 - (i) in respect of certification that the Milestone Payment Eligibility Threshold has been met, either:
 - (1) issue a Milestone Zero Notice; or
 - (2) issue a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co prior to issuing the certificate; and
 - (ii) in respect of certification that the Milestone Payment Eligibility Requirements have been met in respect of a particular Milestone Payment, either issue or not issue the IC Milestone Payment Authorization Certificate after performance of the review

TORONTO: 29441518

contemplated in Section 2.2(g) of Schedule 21 – Construction Period Payments to the Project Agreement.

- (u) Upon notice from Project Co that the matters required to be performed prior to the issuing of the applicable certificate noted in subsection (t) of this Appendix A have been completed, re-inspect the requirements to achieve the Milestone Payment Eligibility Threshold or the Milestone Payment Eligibility Requirements, as the case may be, or re-consider the matters specified to be performed, or repeat the procedure in subsection (t) of this Appendix A, as applicable, until the issuance of the applicable certificate.
- (v) In connection with the Substantial Completion Payment receive and review all relevant documentation, including the Substantial Completion Payment Application (and all attachments and supporting documentation appended thereto or delivered in connection therewith) contemplated in Schedule 21 – Construction Period Payments to the Project Agreement and the Project Agreement, and certify that the requirements for payment of the Substantial Completion Payment have been met.
- (w) Prepare, in consultation with Project Co and the Region, as soon as reasonably practicable and, in any event within, the time period specified in Section 25.8(a) of the Project Agreement, the Minor Deficiencies List, which Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies and a schedule for the completion and rectification of the Minor Deficiencies.
- (x) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 – Dispute Resolution Procedure to the Project Agreement. Without limiting the obligations of the Independent Certifier in this Independent Certifier Agreement, where a determination relating, in whole or in part, to the Public Infrastructure Works is referred to the Independent Certifier pursuant to Section 40.2(f) of the Project Agreement, the Independent Certifier shall consult with the Region Engineer prior to making its determination and take into account the Region Engineer’s views in connection with such event.
- (y) Perform investigations and provide reports in respect of Undisclosed Utilities as contemplated in Section 16.6 of the Project Agreement.
- (z) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services.
- (aa) Provide advice on other matters that may arise that both PA Parties may jointly require.
- (bb) Review and certify the determination of Eligible Costs (Canada) under the Contribution

TORONTO: 294415/8

Agreement to Her Majesty the Queen in right of Canada, represented by the Minister of Transport, Infrastructure and Communities.

- (cc) Review and certify the determination of Eligible Costs (Ontario) under the Transfer Payment Agreement to Her Majesty the Queen represented by the Ontario Ministry of Transport.
- (dd) In connection with all applicable Project Milestone Payments under the Transfer Payment Agreement, receive and review all relevant documentation required to complete, certify and issue the Schedule G.2 Certificate.
- (ee) In connection with all applicable project milestone payments (howsoever described in the Contribution Agreement) under the Contribution Agreement, receive and review all relevant documentation required to complete, certify and issue an Equivalent Federal Funding Certificate substantially similar to the Schedule G.2 Certificate.
- (ff) In connection with the Holdback and the Final Payment under the Transfer Payment Agreement, receive and review all relevant documentation required to complete, certify and issue the Schedule G.4 Certificate.
- (gg) In connection with any holdback and final payment (howsoever described in the Contribution Agreement) under the Contribution Agreement, receive any review all relevant documentation required to complete, certify and issue an Equivalent Federal Funding Certificate substantially similar to the Schedule G.4 Certificate.
- (hh) Conduct a due diligence assessment of the proposed Project Milestone Payments Schedule forming part of the Transfer Payment Agreement and certify that this schedule is achievable, and Eligible Costs (Ontario) are reasonable and meet Eligible Costs (Ontario) criteria.
- (ii) Conduct a due diligence assessment of the proposed milestone payment schedule (howsoever described in the Contribution Agreement) forming part of or attached to the Contribution Agreement as it relates to the Contribution Agreement for the Project and certify that this schedule is achievable, Eligible Costs (Canada) are reasonable and meet Eligible Costs (Canada) criteria, and that the Eligible Costs (Canada) contributed by Her Majesty the Queen in Right of Canada, represented by the Minister of Transport, Infrastructure and Communities will constitute no more than thirty-three and one-third percent (33 1/3%) of the sum of total Eligible Costs (Ontario) and Eligible Costs (Canada).

TORONTO: 294415/8

APPENDIX B

INDEPENDENT CERTIFIER FEE

1. Fee for all Certification Services (other than Certification Services identified in item (aa) of Appendix A to this Independent Certifier Agreement)

The fee for all Certification Services (other than the Certification Services identified at item (aa) of Appendix A of this Independent Certifier Agreement will be a total fixed fee of \$359,887.50 (the “**Total Fixed Fee**”). The Total Fixed Fee will be payable in milestone based installments, as well as upon issuance by the Independent Certifier of certain certifications, each as reflected in the table below.

References to Milestone Zero, and Milestone 1 through (and including) Milestone 33 in the table below corresponds to the Scheduled Milestone Date and corresponding Milestone Number referenced in Attachment “A” of Schedule 21 – Construction Period Payments of the Project Agreement.

MILESTONE NUMBER (if applicable)	MILESTONE DELIVERABLES	FEE (excluding HST)
Milestone Zero	Issuance by the Independent Certifier of the Milestone Zero Notice, and any required confirmations and acknowledgements required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement and/or Her Majesty the Queen in Right of Canada under the Contribution Agreement.	\$32,245.13
Milestone 1	Issuance by the Independent Certifier of: <ul style="list-style-type: none"> (i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 1; (ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and (iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement. 	\$5,665.35

TORONTO: 294415/8

The Region of Waterloo Stage 1 Light Rail Project

Milestone 2	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 2;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 3	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 3;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 4	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 4;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35

TORONTO: 294415/8

The Region of Waterloo Stage 1 Light Rail Project

Milestone 5	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 5;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 6	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 6;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 7	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 7;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35

TORONTO: 29441518

Milestone 8	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 8;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 9	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 9;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 10	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 10;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35

TORONTO: 294415/8

The Region of Waterloo Stage 1 Light Rail Project

Milestone 11	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 11;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 12	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 12;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 13	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 13;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35

TORONTO: 29441518

Milestone 14	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 14;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 15	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 15;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 16	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 16;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35

TORONTO: 29441518

The Region of Waterloo Stage 1 Light Rail Project

Milestone 17	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 17;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 18	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 18;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 19	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 19;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$21,325.61

TORONTO: 294415/8

The Region of Waterloo Stage 1 Light Rail Project

Milestone 20	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 20;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 21	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 21;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$5,665.35
Milestone 22	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 22;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$10,011.18

TORONTO: 294415/8

The Region of Waterloo Stage 1 Light Rail Project

Milestone 23	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 23;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$10,011.18
Milestone 24	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 24;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$10,011.18
Milestone 25	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 25;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$10,011.18

TORONTO: 294415/8

The Region of Waterloo Stage 1 Light Rail Project

Milestone 26	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 26;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$10,011.18
Milestone 27	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 27;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$10,011.18
Milestone 28	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 28;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$10,011.18

TORONTO: 294415/8

<p>Milestone 29</p>	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 29;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	<p>\$10,011.18</p>
<p>Milestone 30</p>	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 30;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	<p>\$10,011.18</p>
<p>Milestone 31</p>	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 31;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	<p>\$10,011.18</p>

TORONTO: 294415/8

Milestone 32	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 32;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$10,011.18
Milestone 33	<p>Issuance by the Independent Certifier of:</p> <p>(i) the IC Milestone Payment Authorization Certificate in respect of the Milestone Payment Application for the Scheduled Milestone Date relating to Milestone 33;</p> <p>(ii) the most recent Schedule G.2 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$10,011.18
N/A	<p>Issuance by the Independent Certifier of the Final Public Infrastructure Works Acceptance Certificate in accordance with Section 20.11(i) of the Project Agreement.</p>	\$7,665.00

TORONTO: 294415/8

The Region of Waterloo Stage 1 Light Rail Project

N/A	<p>Issuance by the Independent Certifier of:</p> <p>(i) the Substantial Completion Certificate in accordance with Section 25.5 of the Project Agreement;</p> <p>(ii) the most recent Schedule G.2 Certificate and G.4 Certificate required to be delivered to Her Majesty the Queen in Right of Ontario under the Transfer Payment Agreement; and</p> <p>(iii) the most recent Equivalent Federal Funding Certificate required to be delivered to Her Majesty the Queen in Right of Canada under the Contribution Agreement.</p>	\$42,129.28
N/A	Issuance by the Independent Certifier of the Final Completion Certificate in accordance with Section 25.11 of the Project Agreement	\$23,081.27
	<u>TOTAL FIXED FEE</u>	\$359,887.50

The fee for all Certification Services (other than Certification Services identified in item (aa) of Appendix A of this Independent Certifier Agreement) will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the completion of the applicable deliverable and referencing the corresponding fee noted in the table above, which invoices shall be in form and substance satisfactory to the PA Parties, and further subject to the fee for all Certification Services (other than the Certification Services identified in (aa) of Appendix A of this Independent Certifier Agreement) not exceeding the Total Fixed Fee and not exceeding the corresponding fee amount noted in the table above in respect of the applicable deliverable referenced in such table.

2. Hourly Rate for Certification Services Contemplated in Item (aa) of Appendix A to the Independent Certifier Agreement for each Independent Certifier Team Member

<u>TEAM MEMBER</u>	<u>HOURLY RATE</u>
Directors (Marlon Bray, John Porter)	Withheld under Section 10 (a) - Third Party
IC Manager (Monica Sechiari)	
IC Coordinator (Suzanne Lardner)	
LRT Specialist (Consultants – Don Ko, Bob Parsons)	

TORONTO: 2944158

Technical Support (Trevor Bass)	Withheld under Section 10 (a) - Third Party
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The fee for the Certification Services identified in item (aa) of this Independent Certifier Agreement will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the performance of such Certification Services which is in form and substance satisfactory to the PA Parties.

TORONTO: 29441518

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

The following personnel shall be involved in the performance of the Certification Services:

Name	Title/Role
Monica Sechiari	IC Manager – Team Leader
Marlon Bray	Director - Back-up Certification Manager
Suzanne Lardner	Senior Cost Consultant - Certification Coordinator
Bob Parsons	Consultant - LRT Specialist/Civil Construction
David Ko	Consultant – LRT Systems
John Porter	Senior Director - Mechanical & Electrical Director in Charge
Trevor Bass	Senior Cost Consultant – Mechanical & Electrical Commissioning Lead

TORONTO: 294415/8

APPENDIX D

CONDUCT OF CLAIMS

This Appendix D shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both the Region and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent

TORONTO: 294415/8

- of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2);
 - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) none of the Indemnifiers complies in any material respect with Section (3).
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. For greater certainty, the Independent Certifier acknowledges and agrees that where the Region is the Beneficiary, the Region may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and

TORONTO: 294415/8

- (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (7) Any person taking any of the steps contemplated by this Appendix D shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Independent Certifier Agreement.

TORONTO: 29441518