

SCHEDULE 16

TITLE ENCUMBRANCES

For purposes of this Schedule 16, the defined term “Lands” shall include any portion of the Lands or any Real Property Interest of the Region in the Lands or any portion thereof.

General Title Encumbrances

Any of the following in existence as of the date of the Project Agreement:

1. Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due.
2. Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to the Region pursuant to the *Construction Lien Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, the Region has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.
3. The rights reserved to or vested in the public or any municipality or governmental or other public authority by any statutory provision.
4. Any subsisting reservations, limitations, provisions and conditions contained in any grants from the Crown of any land or interests therein, including without limitation, reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same.
5. Zoning (including, without limitation, airport zoning regulations), use and building by-laws, Permits, Licences, Approvals and Agreements and ordinances, and federal, provincial or municipal by-laws and regulations relating to the use and occupation of the Lands.
6. Any encroachments, easements, rights of way, rights to use or similar interests revealed by any survey of the Lands or which would be revealed by an up-to-date survey of the Lands.
7. The Project Agreement, any Ancillary Documents and other agreements relating thereto and any interests thereunder.
8. Any rights in favour of or accruing to holders of rights in the Lands which could be ascertained by a review of registered title or other public records which permit or affect the use of the Lands for the purposes of the Project Operations.
9. Agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services which permit or affect the use of the Lands for the purposes of the Project Operations.

10. Unregistered agreements, authorizations, consents, postponements, subordinations, licences or instruments entered into which permit or affect the use of the Lands for the purposes of the Project Operations.
11. Easements, rights of way, rights to use, restrictions, restrictive covenants and similar rights in real property or any interest therein which permit or affect the use of the Lands for the purposes of the Project Operations.
12. Minor imperfections of title.
13. Statutory exceptions to title and any rights reserved to or vested in any person by any statutory provision.
14. The right of any prior owner, occupant or tenant of any portion of the Lands or any properties adjacent to the Lands to occupy any portion of the Lands or to maintain or remove buildings, fixed machinery, equipment, fittings or other fixtures located on such portion of the Lands.
15. The rights of any person entitled to any portion of the Lands through length of adverse possession or prescription.

Title Encumbrances shall also include any Encumbrances or other matters described in paragraphs 5, 6, 8-10, 11, 12, 14 and 15 above, which arise after the date of the Project Agreement, in each case, provided that they permit or affect the use of the Lands for the purposes of the Project Operations.

Title Encumbrances shall also include any Encumbrances or other matters described in paragraphs 1- 15 above which arise after the date of the Project Agreement.

Specific Title Encumbrances

1. All Encumbrances relating to the title to the Lands disclosed or noted on the land titles office parcel registers or abstract indices for the Lands from time to time, including those Encumbrances included in the Background Information as of the date of the Project Agreement and including those Encumbrances referred to in the legal descriptions for the Lands available in the applicable land titles office, in each case as assigned, amended, extended, supplemented, substituted and replaced from time to time as well as those General Title Encumbrances identified above in paragraphs 8, 9, 10 and 11 (the “**Specific Title Encumbrances**”). Notwithstanding the preceding sentence, any Encumbrances referred to in that sentence which are registered after the date of the Project Agreement will not be Title Encumbrances if they:
 - (a) do not permit or affect the use of the Lands for the purposes of the Project Operations;
 - (b) have not been consented to by the Region; or
 - (c) are Encumbrances which Project Co is obliged to remove, vacate or discharge under the Project Agreement.

2. In addition to the information referred to above, Project Co must observe, perform and comply with the commercial obligations set out below which are the current obligations of the Region under various agreements to which the Region will be signatory either at or following Financial Close and which may impact access to and the use of the Non-Region Owned Lands for the Project Operations. The Region represents and warrants, to the best of its knowledge, all of the Design and Construction Requirements relating to the Specific Encumbrances that are currently known have been provided in the Output Specifications, the Current Forms or set out herein.

With respect to those obligations forming the whole or part of a Specific Title Encumbrance specifically outlined in this Schedule 16 as being the responsibility of Project Co (such obligations, “**Specific Encumbrances**”), Project Co will observe, comply with in all material respects and perform the obligations, terms and conditions under all of the Specific Encumbrances, and be liable for the liabilities under all of the Specific Encumbrances, as if Project Co were a party to or bound by the Specific Encumbrances in place of the Region. Following finalization of the agreements constituting the Specific Title Encumbrances and finalization of the parts thereof representing Specific Encumbrances, the Region will develop communication, implementation and interface protocols with Project Co and the counterparties to the Specific Title Encumbrances, satisfactory to Project Co acting reasonably to facilitate performance and compliance with those obligations representing the Specific Encumbrances which are to be passed down and performed by Project Co, and those obligations under the Specific Title Encumbrances which are to be retained by the Region. The Region shall use reasonable commercial efforts to ensure that such counterparties comply with the relevant communication, implementation and interface protocols. Project Co acknowledges that the Specific Title Encumbrances currently in the process of negotiation with third parties (the “**Current Forms**”, copies of which have been provided to proponents as of November 22, 2013) may have Specific Encumbrance obligations, terms, conditions and liabilities in their negotiated and finalized form that differ from those obligations, terms, conditions and liabilities set out in this Schedule 16 or the Current Forms referred to herein. Where the negotiated and finalized form of a Specific Title Encumbrance contains Specific Encumbrance obligations, terms, conditions and liabilities that are materially more burdensome on Project Co or more beneficial to Project Co than those provided in this Schedule 16 or the Current Forms referred to herein, shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

The Current Forms of the Specific Title Encumbrances or summaries of the Specific Encumbrances are being made available or provided to Project Co for review and information purposes. The Region has identified herein those parts of the Specific Title Encumbrances which are being specifically passed down to Project Co as part of the Specific Encumbrances for observance and performance, but Project Co is also expected to read and take account of the other parts of the Specific Title Encumbrances not expressly identified as Specific Encumbrances, the responsibility for which in the first instance is being retained by the Region. Further, Project Co is obligated to not do or omit to do, and not cause or permit to be done or omitted by any Project Co Party or other person for whom Project Co is in law responsible, anything on or with respect to the Project or any part thereof or any improvements thereon that would cause the Region to be in breach under any of the Specific Title Encumbrances (a “**Project Co Act**”). In the event that a Project Co Act causes the Region to be in default under any of the Specific Title Encumbrances, Project Co shall be responsible for any such termination event or the consequences of any such

event. In any such termination event or respect of the consequences of any such termination event, wherever terms such as “Region” or “Transferee” or “RMW” or “Purchaser”, as the case may be, is used in the various agreements outlined herein, the reference shall be deemed to be a reference to “Project Co”.

In addition, in connection with any indemnification obligations under the Encumbrances (including, with respect to environmental matters), the Region may seek indemnification from Project Co in accordance with Section 56 of the Project Agreement.

- (a) Waterloo Spur – The Lands which contain the Waterloo Spur line are owned by the Region and are subject to a Running Rights Agreement with CN to permit freight movements on behalf of Chemtura Canada Co. and CCC Sulphur Products, both located in Elmira, and several other less frequent shippers. The portion of the railway line required for the Project is situated between Waterloo Town Square and Northfield Drive. The details of the times of these movements have been provided in the Output Specifications. Brief summaries of the main agreements relating to the Waterloo Spur follow. Project Co will be required to interface directly with CN, GEXR and/or individual shippers on the freight line where required, and to coordinate and manage the Design and Construction Works within the restrictions imposed by the agreements relating to the Waterloo Spur.
 - (i) Agreement with Southern Ontario Locomotive Restoration Society – This non-profit volunteer operated corporation operates a tourist train service on the Waterloo Spur. Rights have been granted to permit the continuance of its operations until July 1, 2014. The non-profit has requested that it be able to use existing switches and track located in front of the station currently owned by the City of Waterloo and relocate this material to a location planned north of Northfield Drive in the City of Waterloo. Regional Council will consider this request in November of 2013 and, if granted, the removal and salvage of these materials would not be included in the Design and Construction Works. There is no formal agreement relating to this matter beyond June 1, 2014. Any use of the Waterloo Spur by this non-profit beyond June 1, 2014 will not adversely impact the Design and Construction Works and any use of existing rail materials would be subject to further agreement of Regional Council.
 - (ii) Running Rights Agreement with Canadian National Railway – Goderich and Exeter Railway (“GEXR”), under contract to CN, currently operates 4-5x weekly freight service on the Waterloo Spur corridor serving shippers located in the Town of Elmira. Negotiations are underway to limit these shipments to between 11:00 pm and 7:00 am four times weekly to accommodate Design and Construction Works within the Waterloo Spur. The existing agreement expires in December of 2016 and negotiations are under way with a target of completing a revised agreement for continuance of freight within the corridor beyond 2016. The renewal agreement will contain terms and conditions governing the joint operation of freight traffic and Project Operations within the corridor.

Maintenance of the Waterloo Spur for that portion used for System (between milepost 1.78 and 4.78) shall be the responsibility of Project Co while maintenance of the corridor outside of this area will be the responsibility of CN. All permits and approvals required for construction within the corridor, as well as all design and construction activities shall be the responsibility of Project Co. The operational use of the shared portion of the Waterloo Spur shall be in accordance with a joint memorandum of understanding between the Region and CN, the details of which are set out in the “Pre-Final Draft Plan for Joint LRT and Freight Operations on the Waterloo Spur” disclosed in the Output Specifications. Project Co will be responsible for observing, complying with and performing the obligations of the Region thereunder. The current Freight Rights Agreement dated December 6, 2001 expiring in will be superseded by a new freight rights agreement currently being negotiated by the Region and CN, which agreement will be made available to Project Co once completed.

- (iii) Encroachment Agreements with Third Parties—The Region has entered into encroachment agreements with numerous third parties having infrastructure (buried and aerial) within the Waterloo Spur. These agreements require the third parties to relocate this infrastructure, at their expense, typically upon 180 days notice. All third parties have been given notice of the possibility that they may be required to relocate their infrastructure, and these activities and the scheduling and implementation thereof will be coordinated between the Region and Project Co as design development, construction programming and schedule of the Design and Construction Works progresses and is refined.

- (b) Huron Spur— A portion of the Huron Spur corridor to permit the Project Operations from Borden Avenue to Hayward Avenue in the City of Kitchener is being purchased by the Region from CN, with acquisition expected to be completed by the first quarter of 2014. Brief summaries of the main agreements relating to the Huron Spur follow. Project Co will be required to interface directly with CN and GEXR where required, and to coordinate and manage the Design and Construction Works within the restrictions imposed by the agreements relating to the Huron Spur.
 - (i) Agreement of Purchase and Sale- The purchase agreement will include a definitive legal description of the lands to be purchased, and although draft reference plans have been prepared, they have not been finalized or deposited. The lands are being acquired in an “as is” condition. Pursuant to the purchase agreement, the Region will be purchasing a section of the current freight corridor from CN in fee simple subject to a number of easements reserved by CN which will (i) permit CN and GEXR to access the lands to continue freight operations and perform maintenance and repair of the freight tracks and rail infrastructure in on the lands until the existing single freight line is relocated to the CN retained lands within the western portion of the corridor, which relocation is part of the Design ad Construction Works to be undertaken by Project Co, (ii) permit CN and GEXR access to the lands to remove rail improvements, salvaged materials and communications improvements in the event that these activities are not

properly performed or coordinated by Project Co, (iii) require the securing of all permits and authorizations to permit the relocation of the freight track and the operation of the freight track in the new location, all of which is to form part of the Design and Construction Works to be performed by Project Co.

- (ii) 360 Networks/bell Fibre Optic Cable-There is currently an encroachment agreement in favour of 360 Networks/Bell Canada relating to a fibre optic cable located within the lands to be purchased from CN, and it is anticipated that this fibre optic cable will be relocated to the CN retained lands. These activities and the scheduling and implementation thereof will be coordinated between the Region and Project Co as design development, construction programming and schedule of the Design and Construction Works progresses and is refined.
- (iii) Rail Relocation Agreement - This agreement contains the terms and conditions by which the Region, and therefore Project Co, must relocate the existing CN track to the western part of the corridor, including terms and conditions governing erection of fences, approvals, warranty, environmental and road crossing design and construction. This agreement has not been included as part of the Background Information. Project Co will be responsible for the following obligations under the Rail Relocation Agreement:
 - (A) Project Co will be responsible for keeping CN/GEXR apprised of all written communications sent and received by Project Co throughout the process of obtaining necessary approvals to complete the Relocation Work. Project Co will, furthermore, be responsible to provide CN/GEXR any engineering and construction drawings, designs, maps, reports, studies, information and documents that CN/GEXR may require in respect of the Relocation Work, including any environmental assessments and reports that may be required by any regulatory body with form and content acceptable to CN/GEXR and/or to comply with applicable Acts, regulations or rules. CN/GEXR shall be entitled to monitor and inspect the Relocation Work and shall be afforded access to the work site and personnel for this purpose. For clarity, monitoring and/or inspection by CN/GEXR shall not limit the liability and obligations of Project Co pursuant to the Project Agreement or otherwise. Project Co shall provide regular written reports to CN/GEXR on the status and progress of the Design and Construction Works as are relevant to the work performed under the Rail Relocation Agreement;
 - (B) The Rail Relocation Agreement provides for a two year warranty from the final completion of the Relocation Work;

- (C) The Rail Relocation Agreement contains strict scheduling and construction standards and requirements to avoid interruption of freight traffic that must be observed by Project Co as part of the performance of the Design and Construction Works. The agreement also provides for the payment of liquidated damages (\$171.30 per fifteen minute period of delay) applicable to construction related freight delays. These liquidated damages are specified in set forth in Article 18.10 of Schedule 15-2 - Design and Construction Requirements of the Output Specifications;
 - (D) Project Co will be required to comply with railway requirements for health and safety while conducting the Relocation Work. Safety assessments for all road crossings will be the responsibility of Project Co;
 - (E) GEXR will be performing certain work as it affects their existing infrastructure and operations. Project Co will be required to coordinate these activities within the Works Schedule; and
 - (F) Completion of the Relocation Work must be completed to prior to the discontinuance of use of the existing track and commencement of construction of the Design and Construction Works for the System on the Huron Spur lands.
- (c) Grant of Easement from Province of Ontario (Ontario Infrastructure and Lands Corporation) to permit use of hydro corridor- The form of hydro corridor easement offered by Her Majesty the Queen in right of Ontario by its Minister of Infrastructure as represented by the Ontario Infrastructure and Lands Corporation by separate Grant of Easement for each of (a) light rail transit construction/operation/maintenance commencing at the junction of the hydro corridor and Courtland Avenue and terminating adjacent to Fairview Park Mall, in the City of Kitchener; and (b) a retaining wall contemplated on the north side of the hydro corridor adjacent to Fairview Park Mall form part of the Background Information. These easements are not exclusive and are subject to such further and other rights or entitlements granted by the Province of Ontario within the easement corridor. Any required road crossings within the hydro corridor (for example, Wilson Avenue in the City of Kitchener) will be subject to the completion of an agreement permitting access and construction of the crossing by the road authority (the City of Kitchener). The Region acknowledges that the easements provide for an option for the Province to terminate the easements and require the removal of the infrastructure that has been installed on these lands, and provided that such termination is not caused by a Project Co Act, the Region will be accepting the risk associated therewith. Project Co will be responsible for the following provisions pertaining to each of the easements:
- (i) Paragraph 10;

- (ii) Paragraph 14;
 - (iii) Paragraph 15;
 - (iv) Paragraph 17;
 - (v) Paragraph 18;
 - (vi) Paragraph 19;
 - (vii) Paragraph 20;
 - (viii) Paragraph 23;
 - (ix) Paragraph 24;
 - (x) Paragraph 26;
 - (xi) Paragraph 28; and
 - (xii) Paragraph 31.
- (d) Agreement with Province of Ontario to permit construction of LRT beneath Highway 7/8 (“Conestoga Parkway”) - The area where the King's Highway Number 7/8 intersects the Huron Park Spur rail corridor is under the ownership of Her Majesty the Queen in right of Ontario, represented by the Minister of Transportation of the Province of Ontario (“MTO”). This agreement is currently in draft form and has been included in the Background Information. It is expected that the Region and MTO will be commencing discussions and negotiations in connection with the content of this agreement in December of 2013. The Region anticipates that the negotiated final form of agreement will be not more onerous than the form of agreement attached hereto. Project Co will be responsible for the following provisions with respect to the agreement:
- (i) Paragraph 2.1;
 - (ii) Paragraph 2.2 (limited to subparagraphs (a), (b) and (c));

- (iii) Paragraph 2.3;
 - (iv) Paragraph 3.1;
 - (v) Paragraph 5.3;
 - (vi) Paragraph 5.4;
 - (vii) Paragraph 7.1;
 - (viii) Paragraph 7.2;
 - (ix) Paragraph 7.2;
 - (x) Paragraph 8.6;
 - (xi) Paragraph 9.1;
 - (xii) Paragraph 9.2; and
 - (xiii) Paragraph 11.2.
- (e) The area where the King's Highway Number 85 intersects Northfield Drive West, in the City of Waterloo is under the ownership of Her Majesty the Queen in right of Ontario, represented by MTO. This agreement is currently in draft form and has been included in the Background Information. A similar agreement will be required for the operation and maintenance of light rail transit within the MTO right of way that intersects the Huron Park Spur. Project Co will have the equivalent responsibilities thereunder. It is expected that the Region and MTO will be commencing discussions and negotiations in connection with the content of this agreement in December of 2013. Project Co will be responsible for the following provisions with respect to the agreement:
- (i) Paragraph 3.1;
 - (ii) Paragraph 3.2;

- (iii) Paragraph 3.3;
- (iv) Paragraph 3.6;
- (v) Paragraph 3.12; and
- (vi) Paragraph 3.13.