

SCHEDULE 24

EXPIRY TRANSITION PROCEDURE

1. Independent Inspector

- 1.1 Not less than 66 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with the Region's procurement policies, engage an independent and suitably qualified and experienced entity (the "**Independent Inspector**") to carry out inspections of the System pursuant to this Schedule 24.
- 1.2 Project Co and the Region shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector's engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 of this Schedule 24 by the specified deadline, then the Independent Inspector shall be selected as follows:
 - (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced entities that would be acceptable to that Party as the Independent Inspector, and shall provide notice thereof to the other Party; and
 - (b) if the Parties have both selected a common entity, then such common entity shall be the Independent Inspector; or
 - (c) if the Parties have not selected a common entity, then the Independent Inspector shall be selected in accordance with Schedule 27 - Dispute Resolution Procedure.

2. Condition of System on Expiry

- 2.1 Subject to the exceptions specified in Section 2.2 of this Schedule 24, on the Expiry Date:
 - (a) each element of the System and the Lands (including the ground soil located on the Lands) shall be in a condition which is consistent with due performance by Project Co of its obligations under this Project Agreement and, in particular, is consistent with the System having been maintained in accordance with the Maintenance and Rehabilitation Specifications, and, with respect to the Lands and the ground soil located on the Lands, does not deviate from the Pre-Existing Environmental Site Conditions by reason of any Contamination for which Project Co is responsible pursuant to this Project Agreement;

- (b) each element of the System shall be in good operating order (normal wear and tear excepted), capable of performing in accordance with the performance specifications and standards set out in the Output Specifications; and
- (c) each element of the System shall comply with Appendix B – Expiry Date Requirements of the Maintenance and Rehabilitation Specifications,

(collectively, the “**Expiry Transition Requirements**”).

2.2 For greater certainty, this Schedule 24 shall not apply to any element of the System to be maintained by the Region in accordance with this Project Agreement.

3. System Inspections

3.1 The Parties shall cause the Independent Inspector to perform an inspection of the System and to produce and deliver to each of the Parties a written report (a “**System Condition Report**”) not less than 60 months prior to the Expiry Date that:

- (a) identifies the condition of the System and each element of the System (subject to the exceptions specified in Section 2.2 of this Schedule 24) in relation to the Expiry Transition Requirements;
- (b) assesses Project Co’s draft Handover Maintenance Plan to be prepared under Section 4 of this Schedule 24 , and provides the Independent Inspector’s opinion on the adequacy of Project Co’s proposed strategy for meeting the Expiry Transition Requirements by the Expiry Date;
- (c) identifies any works required to ensure the System and each element of the System (subject to the exceptions specified in Section 2.2 of this Schedule 24) will meet the Expiry Transition Requirements on the Expiry Date (the “**Expiry Transition Works**”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
- (d) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Expiry Transition Works (the “**Expiry Transition Works Costs**”); and
- (e) details how the Expiry Transition Works Costs were calculated.

3.2 The Parties shall cause the Independent Inspector to perform another inspection of the System and produce and deliver to each of the Parties an updated System Condition Report (each a “**Revised System Condition Report**”) on each anniversary of the date of the original System Condition Report.

3.3 The Asset Management Plan shall be amended and updated, as applicable, to include all Expiry Transition Works and all Expiry Transition Works Costs identified in either the System Condition Report or any Revised System Condition Report not already included in the then current Asset

Management Plan. The Asset Management Plan shall also be amended and updated as required to reflect the requirements of any Handover Maintenance Plan approved by the Region under Section 4 of this Schedule 24.

- 3.4 Project Co shall carry out the Expiry Transition Works at its own cost notwithstanding that the actual cost of the Expiry Transition Works may be higher than the Expiry Transition Works Costs.
- 3.5 Either Party may dispute the System Condition Report or any Revised System Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with Schedule 27 - Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 27 - Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the System Condition Report or any Revised System Condition Report, then either the System Condition Report or any Revised System Condition Report, as the case may be, shall be deemed to be amended accordingly, as amended pursuant to Section 3.3 of this Schedule 24, and all deductions and payments permitted or required by Section 5 of this Schedule 24, shall be adjusted accordingly.
- 3.6 Prior to the carrying out of any System inspection under this Section 3, either Party may notify the other to suggest that the processes contemplated by this Schedule 24 should be deferred and the Parties shall then meet in good faith to consider what savings may be generated by such a deferral. The Region may, at its absolute discretion, issue a notice to Project Co confirming the period of any deferral which it believes is appropriate and the provisions of Section 39.2(j) (Innovation and Value Engineering) of the Project Agreement shall apply in relation to any net savings in the costs of Project Co and/or any Subcontractor arising as a result of such deferral.

4. The Handover Maintenance Plan

- 4.1 Not less than 63 months prior to the Expiry Date, Project Co shall produce and deliver to the Region the first draft of Project Co's proposed strategy for meeting the Expiry Transition Requirements (the "**Handover Maintenance Plan**"), as a supplement to the Asset Management Plan. The first draft of the Handover Maintenance Plan shall also specifically set out Project Co's assessment of the matters to be included with the System Condition Report, as set out in Section 3.1 above.
- 4.2 Not later than 2 months following the delivery of the initial System Condition Report and any Revised System Condition Report, Project Co shall produce and deliver to the Region an updated Handover Maintenance Plan which is consistent with the findings of such Reports.
- 4.3 Each Handover Maintenance Plan must also specify:
- (a) the months in which Project Co plans to complete each element of the Expiry Transition Works, including details of what work will be completed in each individual month; and

- (b) the Payment Periods in which Project Co anticipates incurring each element of the Expiry Transition Works Costs, including details of how much Project Co anticipates will be paid by it in each individual Payment Period.
- 4.4 The Region may reject any Handover Maintenance Plan if, in the reasonable opinion of the Region:
- (a) completion of the Handover Maintenance Plan by Project Co would not satisfy the Expiry Transition Requirements;
 - (b) Project Co would not be likely to be able to complete the Handover Maintenance Plan by the Expiry Date, or the Handover Maintenance Plan is for any other reason unlikely to be performed in the manner proposed;
 - (c) the scheduling of the Expiry Transition Works under the Handover Maintenance Plan would have the effect that, at any point in time, the total Expiry Transition Works Costs still to be incurred by Project Co under the Handover Maintenance Plan would be greater than 80% of:
 - (i) the aggregate of the Monthly Service Payments anticipated to be payable by the Region to Project Co from that date until the Expiry Date; plus
 - (ii) the anticipated amounts standing to the credit of the Escrow Account at that date; or
 - (d) there are errors or insufficient detail in the Handover Maintenance Plan, which prevents the Region from reasonably make the assessments in paragraphs (a) – (c) above, in which case the Region shall promptly request Project Co to correct the relevant parts of the Handover Maintenance Plan or supply the missing information.
- 4.5 Where the Region rejects any Handover Maintenance Plan, the Region shall deliver a notice to Project Co, stating that the Handover Maintenance Plan has been rejected and giving reasons, within one (1) month of receiving the relevant Handover Maintenance Plan (or, if later, within one (1) month of the date of receiving the information specified in Section 4.4(d) above). A Handover Maintenance Plan which is not rejected by the Region within one (1) month of receipt will be deemed to be accepted.
- 4.6 Where the Region rejects any Handover Maintenance Plan, Project Co shall deliver a revised Handover Maintenance Plan to the Region within one (1) month of receiving notice of the rejection.
- 4.7 If following the delivery of the System Condition Report or any Revised System Condition Report, a compliant and approved Handover Maintenance Plan is not in place by the date falling two (2) months after the delivery of such report, the Region shall be entitled to make deductions from subsequent instalments of the Monthly Service Payment on the following basis:

- (a) where Project Co has failed to deliver a Handover Maintenance Plan by the required date, the Region may deduct amounts in aggregate up to the value of the Expiry Rehabilitation Costs specified in Section 5.1 of Schedule 24;
 - (b) where the Region has rejected a draft Handover Maintenance Plan on specific grounds, the Region may deduct an amount representing the value of the non-compliant elements of the plan (or, where applicable, such amounts as are necessary to allow the test in Section 4.4(c) above to be satisfied), in aggregate up to the value of the Expiry Rehabilitation Costs.
- 4.8 If Project Co fails to carry out any Expiry Transition Works in accordance with the schedule in an approved Handover Maintenance Plan or in a manner consistent with the Expiry Date Requirements, the Region may deduct the value of those Expiry Transition Works from subsequent instalments of the Monthly Service Payment.
- 4.9 Any amounts deducted under Section 4.7 or 4.8 above shall be placed in the Escrow Account, and released to Project Co upon approval of the relevant Handover Maintenance Plan or satisfactory completion of the relevant works.
- 4.10 For the avoidance of doubt, the Region's rights under this Section 4 are in addition to any other rights or remedies of the Region pursuant to this Project Agreement, including taking remedial action in accordance with Section 32 of this Project Agreement.

5. Payments To and From Escrow Account

- 5.1 Following the date for delivery of the System Condition Report, for the purposes of Section 5.2 of this Schedule 24, the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the "**Expiry Rehabilitation Costs**"). Where the Expiry Transition Works Costs are greater than the Expiry Rehabilitation Costs, the difference between the Expiry Transition Works Costs and the Expiry Rehabilitation Costs shall be apportioned equally over the Payment Periods from the date the System Condition Report is to be delivered hereunder to the Expiry Date (each instalment being the "**Expiry Transition Amount**"). If the System Condition Report is delivered after the date for delivery hereunder, then the first instalment to be paid shall also include the amounts to be paid under the instalments that would have been payable prior to the date the System Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.3 or 3.5 of this Schedule 24, the Parties agree that the Expiry Transition Amount shall be adjusted accordingly.
- 5.2 Subject to Sections 5.3 and 5.5 of this Schedule 24, the Region may deduct the Expiry Transition Amount from each Monthly Service Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the "**Escrow Account**"), the Expiry Transition Amount. If in any Payment Period, the Expiry Transition Amount is greater than the relevant Monthly Service Payment, the Region may deduct the difference between the Expiry Transition Amount and the Monthly Service Payment from the next Monthly Service Payment or from such other Payment Period as otherwise agreed between the Parties.

- 5.3 The Region shall not deduct any amount from a Monthly Service Payment as contemplated in Section 5.2 or 5.5 of this Schedule 24 if, at such time, the funds in the Escrow Account (disregarding for this purpose any amounts deposited in accordance with Section 4) exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed.
- 5.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. The Region shall consider such request within 10 Business Days and if the funds in the Escrow Account (disregarding for this purpose any amounts deposited in accordance with Section 4) exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then the Region shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by the Region to evaluate such request.
- 5.5 Following the date of any Revised System Condition Report, the Expiry Transition Amount under Section 5.1 shall be recalculated and if the amount in the Escrow Account (including for this purpose any amounts deposited in accordance with Section 4) (being the deductions of the Expiry Transition Amount made since the System Condition Report) together with the deductions currently scheduled to be made from the remaining Monthly Service Payments under Section 5.2 (and under any previous application of this Section 5.5) is less than the revised Expiry Transition Amount, then the Region may additionally deduct such shortfall, in equal instalments, from each remaining Monthly Service Payment until the Expiry Date, and pay each instalment into the Escrow Account and Section 5.4 of this Schedule 24 shall continue to apply until the Expiry Date.
- 5.6 As an alternative to the deductions permitted by Sections 5.2 and 5.5 of this Schedule 24 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4 of this Schedule 24, Project Co may (and if, at any time, the amounts which the Region is permitted to deduct pursuant to Sections 5.2 and 5.5 of this Schedule 24 is greater than the remaining Monthly Service Payments, Project Co shall), within 5 Business Days of a written request from the Region, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of the Region in an amount equal to the amounts which the Region is permitted to deduct pursuant to Sections 4, 5.2 and 5.5 of this Schedule 24, in a form and from a surety or bank, as applicable, acceptable to the Region.

6. Project Co Not Relieved of Obligations

- 6.1 Notwithstanding:
- (a) any agreement of the Region to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
 - (b) any participation of the Region in any inspection under this Schedule 24; and
 - (c) the complete or partial carrying out of the Expiry Transition Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Project Agreement, including without limitation the Output Specifications.

7. Final System Condition Report

- 7.1 The Parties shall cause the Independent Inspector to perform an inspection of the System and to produce and deliver to each of the Parties a System Condition Report within 30 Business Days after the Expiry Date (the “**Final System Condition Report**”) that documents whether the System met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.
- 7.2 If the Final System Condition Report identifies any Expiry Transition Works, the Region may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and the Region shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Expiry Transition Security to Project Co.
- 7.3 Provided that the funds in the Escrow Account and/or the Expiry Transition Security is adequate to meet Project Co’s obligations in respect of the Expiry Transition Works identified in the Final System Condition Report, following any withdrawal from the Escrow Account or call upon the Expiry Transition Security in accordance with Section 7.2, Project Co shall have no further liability with respect to such Expiry Transition Works.
- 7.4 If no Expiry Transition Works are identified in the Final System Condition Report, the Region shall, within 20 Business Days of receipt by the Region of the Final System Condition Report, pay the funds in the Escrow Account (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co, unless the Region disputes the Final System Condition Report, in which case the Escrow Account and Expiry Transition Security shall be dealt with as determined in accordance with Schedule 27 - Dispute Resolution Procedure.