

MEMORANDUM OF UNDERSTANDING

BETWEEN

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

AND

CITY OF OTTAWA

FOR THE

OTTAWA LRT PROJECT

Effective October 26, 2011

1.0 INTRODUCTION

1.1 Purpose of Memorandum of Understanding

The purpose of this Memorandum of Understanding (“Memorandum” or “MOU”) is to clarify the roles and responsibilities of the Ontario Infrastructure and Lands Corporation (“Infrastructure Ontario”) and the City of Ottawa (“City”) with respect to the Ottawa Light Rail Transit Project: Tunney’s Pasture to Blair Station (the “Project”). This Memorandum sets out the service parameters, operational protocol, and reporting relationship and arrangement between Infrastructure Ontario and the City (collectively referred to herein as the “Parties and each individually, as a Party”).

This MOU does not affect, modify, limit or interfere with the responsibilities of any of the Parties under law. In the event of any conflict between this Memorandum and any law, the law prevails.

1.2 Infrastructure Ontario's Legislative Authority and Mandate

(a) Legislative Authority

The legislative authority of Infrastructure Ontario is set out in the *Ontario Infrastructure and Lands Corporation Act, 2011* (“*OILC Act, 2011*”). Infrastructure Ontario is classified as an operational enterprise agency in accordance with Management Board’s Agency Establishment & Accountability Directive.

(b) Mandate

Infrastructure Ontario is a crown corporation wholly owned by the Province of Ontario and established by the *OILC Act, 2011*. The *OILC Act, 2011* defines Infrastructure Ontario’s responsibilities.

Infrastructure Ontario uses Alternative Financing and Procurement (“**AFP**”) methods to deliver large public infrastructure projects in Ontario. AFP uses private sector expertise related to design, construction, financing and maintenance to deliver infrastructure projects on-time and on-budget and within the project owner’s specifications, and allocating risks to the party best able to manage them.

1.3 Effective Date of Agreement

This Memorandum becomes effective on the date it is executed by the Parties.

2.0 GUIDING PRINCIPLES

2.1 Relationship

The Parties agree that they will adhere to the following principles in their relationship:

- (a) The Parties will make best efforts to adhere to the terms established in this Memorandum. The failure of the Parties to comply with this Memorandum does not affect the validity of any action taken by the Parties or give rise to any rights or remedies by the Parties.
- (b) Infrastructure Ontario shall be engaged by the City as its Commercial Procurement Lead for, the procurement process with respect to the Project.
- (c) Infrastructure Ontario and the City will provide expertise and information in delivering the Project using alternative finance and procurement principles, as well as practices, procedures, and procurement and contracting documents developed by Infrastructure Ontario and the City. The parties recognize Infrastructure Ontario's expertise in determining the risk allocation in AFP project agreements for the purpose of achieving marketable, bankable and biddable AFP projects.
- (d) In light of the public mission of the City and Infrastructure Ontario respectively, the Parties shall agree and acknowledge that they shall conduct themselves under this MOU in a spirit of partnership and cooperation.
- (e) The Parties confirm that decisions respecting the Project and any Disputes (defined herein) shall be dealt with in accordance with Section 2.6 of this MOU.

2.2 Consultation and Communication

The Parties recognize that the timely exchange of information and consultation is essential to the success of their respective mandates.

The Parties therefore agree that:

- (a) The City will make best efforts to keep Infrastructure Ontario advised of information, policy developments, issues or events that concern or can be reasonably expected to concern Infrastructure Ontario in the exercise of its responsibilities.
- (b) Infrastructure Ontario will make best efforts to keep the City advised of information, policy developments, issues or events that concern or can be

reasonably expected to concern the City in the exercise of its responsibilities.

2.3 Key Project Management Positions and Contacts

The City and Infrastructure Ontario acknowledge and agree that timely access to the other's key decision-makers is required in order to facilitate the successful implementation of the Project.

The City and Infrastructure Ontario will assign individuals to certain key positions as follows:

Infrastructure Ontario will assign Rob Pattison, Vice President, Project Delivery (the "Infrastructure Ontario VP") and Bruce Beaton, Project Manager (the "Infrastructure Ontario PM") who together will be responsible for providing services on behalf of Infrastructure Ontario;

The City will assign John Jensen Director, Rail Implementation as the City's lead contact person who will have authority (as between the City and Infrastructure Ontario) to speak for the City in respect of matters arising from or related to the Project and this MOU;

The City and Infrastructure Ontario will facilitate regular communication between the City's senior management and the Infrastructure Ontario VP and other members of Infrastructure Ontario's DBFM and Major Projects Group and senior management, as more particularly described in Section 2.6 of this MOU.

2.4 Effective Project Management

Infrastructure Ontario and the City are both committed to ensuring that the Project is delivered on-time and on-budget while meeting the quality standards to be established in the scope definition of the Project. To meet these objectives, both Parties acknowledge the need to use best practices in project management in the delivery and implementation of the Project.

The Parties agree that the Project will be implemented in compliance with the City's Project Charter dated ● (the "**Project Charter**"), together with the City's Project Management Plan dated ●, to be amended and updated as mutually agreed between the Parties to reflect the principles of this MOU, and thereafter updated from time to time as mutually agreed by the Parties (the "**Project Management Plan**").

The Project Charter and the Project Management Plan will define the principles by which the Project team will implement the Project. Among other key issues, the Project Management Plan will provide a detailed milestone schedule to which both Parties will commit, and describe the risk management framework to be applied to the Project. The Project Management Plan will also provide a framework for the development of a

detailed and ongoing plan for the management and implementation of the Project which will include the detailed schedule, budget, and risk management plan.

The Project Management Plan will adopt the reporting obligations for the Project referred to in Section 2.6 and will include detailed reporting obligations for the Project (in compliance with the provisions of Section 2.6), and will include the use of specific information technology tools to support the strategies and workflows incorporated within the project management and controls framework. The Parties agree to use this common set of tools to allow the efficient, effective and transparent management of the Project. To ensure the success of the Project, the Parties agree that the use of rigorous project management methodologies is critical, and each of the Parties agree to eliminate any barriers that may be identified to the adoption of such methodologies.

2.5 Governing Structure and Organization

- (a) Schedules “A” and “B” annexed hereto set out the Governance Model and the Organizational Chart, respectively, for the Project.
- (b) The Project’s procurement and overall implementation shall be overseen by the City’s OLRT Executive Steering Committee consisting of those representatives of the City and Infrastructure Ontario, as set out in Schedule “C” annexed hereto.
- (c) The Infrastructure Ontario PM would lead the procurement phase of the Project up to Financial Close and would report to the Director, Rail Implementation with respect to the Project, while retaining his reporting relationship within Infrastructure Ontario with the Infrastructure Ontario VP. The Infrastructure Ontario PM shall be located in the office of the Director, Rail Implementation.
- (d) The Infrastructure Ontario PM shall lead the procurement team for the Project composed of those members set out in Schedule “C” annexed hereto.
- (e) The preferred proponent and the Project Agreement (and material matters relating thereto requiring Council approval) will be recommended to Council for its approval by the OLRT Executive Steering Committee at the close of RFP process; in the case of the preferred proponent, the recommendation shall be based upon a report prepared by the Evaluation Team (composed of those members set out in Schedule “C” annexed hereto).

2.6 Decision-Making

- (a) The City will retain final approval on all decision making.
- (b) The process for resolving Disputes (defined immediately below) shall be as follows:
 - (i) If any disagreement arises between the Parties with respect to any issue or matter in connection with the Project or this MOU (a "Dispute"), either Party may require that the procedure set out in subparagraph (ii) be followed to the extent necessary to resolve the Dispute:
 - (ii) The Director, Rail Implementation and the Infrastructure Ontario VP shall attempt to resolve the Dispute informally, failing which the Deputy City Manager, Infrastructure Services and Community Sustainability and the Infrastructure Ontario Senior Vice President, Civil shall then attempt to resolve the Dispute informally, in each case by meeting as often, for a duration and as promptly as those individuals deem necessary to discuss the Dispute and negotiate in a good faith in an attempt to resolve the Dispute.
 - (iii) to assist in resolving Disputes, the individuals involved shall avail themselves of the resources of members of OLRT Executive Steering Committee and the OLRT Internal Co-Ordination Committee where appropriate,
- (c) If the representatives of the Parties (as referred to in subparagraph (b) above) are unable to resolve any Dispute through informal discussions or negotiations and a Party wishes to escalate the decision-making in respect of such Dispute pursuant to the terms of this section 2.5, then it shall refer the Dispute to the Chief Executive Officer of Infrastructure Ontario (CEO) and the City Manager who will attempt to resolve the Dispute through discussion and good faith negotiation. The Parties acknowledge and agree that from time to time either the CEO or the City Manager may appoint a designate to act on his/her behalf in respect of the Dispute, provided, however, that in such an event the individual designating shall obtain the prior agreement of the other individual as to the use of the designate.
- (d) The Parties acknowledge that in the event of a continuing Dispute, the position of the City Manager will prevail.

The Parties will endeavor to minimize sources of disagreement and take timely action to resolve Disputes in accordance with this Section 2.6 of the MOU. The Parties shall escalate the Dispute as quickly as is necessary so as not to jeopardize the effective and

efficient delivery of the Project and to avoid any delays in the Project schedule. In addition, the Parties shall attempt to resolve the Dispute at the lowest level possible.

2.7 Advisors and Consultants

Except as otherwise agreed by the Parties, the City will retain all external project advisors and consultants required for the purpose of the Project, and shall ensure that with respect to financial advisors, solicitors and insurance and fairness advisors the City and Infrastructure Ontario shall enter into a "common interest arrangement" containing provisions satisfactory to the City, Infrastructure Ontario and the relevant consultant. In addition, the City will ensure that Infrastructure Ontario has the ability to receive information and discuss matters directly with the City's technical advisors.

Subject to the preceding paragraph, Infrastructure Ontario may, with the agreement or upon the direction of the City, retain advisors and consultants to work with and supplement the staff of the City and/or Infrastructure Ontario in order to facilitate the efficient and effective delivery of the Project.

The Parties agree to consult with each other regarding any additional work that either Party desires to request of the external advisors and consultants. The Parties will report to each other on the additional work undertaken by the external advisors and consultants in the same manner as they report to each other in respect of all Project-related work.

External advisors and consultants who are not the subject matter of a common interest arrangement, but rather are jointly retained by the City or by Infrastructure Ontario for the Project in accordance with this section 2.7 will represent and jointly advise both Infrastructure Ontario and the City on matters in respect of the Project except for those matters where Infrastructure Ontario and the City may be adverse in interest or take contrary positions. In such cases, Infrastructure Ontario and the City must then each decide whether to seek independent advice. Infrastructure Ontario and the City agree, however, that in the event of a Dispute between Infrastructure Ontario and the City regarding the Project (subject to the provisions of Section 2.6), such external advisors and consultants who are retained may, with the agreement of both Infrastructure Ontario and the City, continue to act for Infrastructure Ontario and the City on the Project and shall be entitled in any event to continue to act for Infrastructure Ontario or the City in respect of other unrelated projects.

Unless otherwise agreed, and to the extent reasonably practical, each Party shall endeavour to provide the other Party with reasonable notice of each and every occasion when an advisor is expected to provide advice with respect to the Project.

2.8 FEES, EXPENSES AND INVOICING

a. IO Fees

The IO Fee for all services to be provided by IO under this MOU up to and including Financial Close (the "**Pre-FC IO Fee**") is one million, seven hundred and six thousand, nine hundred and fifteen Canadian dollars (CDN\$1,706,915).

IO has provided to the City the estimated additional IO Fee (the "**Implementation Phase IO Fee**") for all services to be provided by IO under this MOU between Financial Close and substantial completion of the Project (the "**Implementation Phase**") is four million, forty-three thousand, three hundred and seventy-seven Canadian dollars (CDN\$4,043,377). The City and IO will jointly review and agree on the IO staffing, scope of work for the Implementation Phase, as well as the Implementation Phase IO Fee prior to the end of February 2012, or such later date as may be mutually agreed between them, and they mutually agree and acknowledge that the Implementation Phase IO Fee shall not exceed the foregoing estimate.

b. **Travel and Accommodation Expenses**

All travel and accommodation expenses for IO staff and in-house consultants will be billed to the City on a direct pass-through basis in accordance with current Province of Ontario's Travel, Meal and Hospitality Expenses Directive and will be supported by a written statement of account listing in reasonable detail all expenses claims. All travel by Infrastructure Ontario will be undertaken only with the prior approval of or subsequent ratification by the City.

c. **Invoicing**

(i) The IO Fee, (ii) all travel and accommodation expenses for IO staff and in-house consultants, (iii) any fees charged to IO by external Project advisors and/or consultants engaged pursuant to s. 2.7 of this MOU, and (d) applicable HST, will be billed by IO to the City quarterly. The Pre-FC IO Fee shall be invoiced by IO in equal installments between execution of this MOU and Financial Close; the agreed Implementation Phase IO Fee shall be invoiced in equal monthly installments between Financial Close and substantial completion of the Project.

d. **Ottawa Resources.**

For greater certainty, IO shall not be required to pay for use and/or occupancy of office space, furniture, telecommunications and other equipment, administrative and other staff provided by the City to IO for the purposes of allowing IO to perform its obligations under this MOU.

3.0 ROLES AND RESPONSIBILITIES

3.1 Key Responsibilities

Infrastructure Ontario shall be engaged by the City as its Commercial Procurement Lead for the procurement, of the Project, and shall perform such other functions as set out below. Subject to the provisions of Sections 2.5 and 2.6, Infrastructure Ontario will manage the procurement of the Project, which shall include developing the RFP and Project Agreement in conjunction with the City. The City and Infrastructure Ontario bring distinct competencies and resources to the arrangement. In this regard, subject to Sections 2.5 and 2.6, Infrastructure Ontario and the City will each have the following, non-exhaustive, responsibilities:

- (i) Infrastructure Ontario will:
 - (a) provide Project procurement coordination and transaction management services up to and including the date of Financial Close, including, in conjunction and co-operation with the City, developing the procurement documents and negotiating the terms and conditions of the Project Agreements, and other agreements to be entered into in respect of the Project; in connection with the foregoing, the RFP, the Project Agreement and related documents shall be based on Infrastructure Ontario standard processes and documents that shall be customized appropriately for the Project; Infrastructure Ontario shall perform such services as Commercial Procurement Lead in accordance with Project Governance provisions contained in this MOU;
 - (b) coordinate the development of the Project-Specific Output Specification (PSOS) for the project, incorporating planning, design, operations, and background information developed by the City;
 - (c) provide advisory support to the contract management activities of the City during execution of the Project following Financial Close, as further detailed in the Project Charter and Project Implementation Plan;
 - (d) provide advisory support to the City as requested by the City respecting the contract management activities of the Project during the long-term maintenance period of the contract following the completion or substantial completion of the Project facilities as set out in the Project Agreement(s), as further detailed in the Project Charter and Project Implementation Plan;
 - (e) work closely and cooperatively with the City in, liaising with, seeking input in, and obtaining all applicable licenses, permits, approvals and agreements from federal, provincial, and municipal governmental and regulatory agencies which are required to be obtained by or on behalf of the City in order to reach Financial Close;
 - (f) should the Project require it, and in concurrence with the City, liaise with any federal, provincial or municipal agency;
 - (g) work closely and cooperatively with, and keep the City informed with respect to the status of the procurement of the Project, with a view to achieving the

effective and efficient delivery of the Project;

- (h) consult regularly with City staff to assist the City to meet any relevant timelines under the procurement documents and Project Agreement;
 - (i) retain all required procurement-related documentation to meet respective audit requirements;
 - (j) provide reports and other information to the City in accordance with the Project Charter and the Project Implementation Plan;
- (ii) The City will:
- (a) meet all information, statutory and public policy requirements, develop or cause to be developed the design documents for the Project to the level required for the Project procurement process based on the selected DBFM delivery model, ensure that user and community input, as necessary, is reflected in the development of the Project and ensure that the Project meets the requirements of the OLRT Executive Steering Committee and the OLRT Alignment Committee and meets technical requirements;
 - (b) work in conjunction and co-operation with Infrastructure Ontario to develop, in accordance with the Project timeline, and to a standard that meets the requirements of the selected DBFM delivery model, the Project budget, the technical requirements and policy requirements;
 - (c) work in conjunction and co-operation with Infrastructure Ontario and the external advisors and consultants to develop the procurement and contract documents for the selected DBFM delivery model, including, without limitation, the Request for Proposals, RFQ evaluation and the Project Agreement(s);
 - (d) prepare the corridor for the Project to a standard that allows for the transactions contemplated in the Project Agreement to be effected, which preparation shall include, without limitation, necessary property acquisitions, certain advance works and certain utility relocation;
 - (e) conduct due diligence, which shall include, without limitation, corridor investigations, of the Project site to a standard that meets the requirements of the selected DBFM delivery model;
 - (f) obtain all required approvals and all applicable licenses, permits, approvals and agreements (including utility agreements) from other federal, provincial and regulatory agencies which are required to be obtained for the Project;
 - (g) consult with Infrastructure Ontario with respect to any disputes that arise between the City and its counterparty(ies) under the Project Agreement(s);
 - (h) consult with Infrastructure Ontario with respect to fulfilling the City's role in

the determination of completion or substantial completion of the Project as set out in the Project Agreement(s);

- (i) ensure that appropriately qualified and resourced planning, technical, administrative, project management, stakeholder, and other resources required as inputs to the RFP and Project Agreement are provided in a timely fashion to meet project deadlines;
- (j) develop a disruption mitigation plan to be implemented during the construction of the Project;
- (k) consult, as may be required by the City, with Infrastructure Ontario before approving any change orders under the Project Agreements; and
- (l) provide reports and other information to Infrastructure Ontario in accordance with the Project Charter and the Project Implementation Plan.

3.2 Communications Protocol

The Project represents an important infrastructure commitment by the City of Ottawa and the Province of Ontario. Accordingly, a comprehensive communications and stakeholder relations plan is necessary to ensure the public is informed and engaged where necessary on Project developments and to ensure the procurement of the Project is recognized as an open, fair and transparent process. This plan will support effective communications with Project stakeholders and the surrounding communities.

To ensure the timely exchange of information and clear lines of communication at all levels of Project management, a communications protocol is essential to support the delivery of the Project, to ensure consistency of messaging, and to support the Parties in accounting to the public at large.

A communications protocol outlining roles and responsibilities will be developed by the Parties. The Parties shall also ensure that the Project Agreements contain a detailed communications protocol that is consistent with the communications protocol that is eventually developed and agreed by the Parties.

4.0 GENERAL

4.1 Amendments to this MOU

Any amendments or changes to this MOU shall be by written amendment signed by the Parties, except for any change to the Parties' representatives set out in section 2.3 of this MOU, which changes may be made by providing written notification to the other Party.

4.2 Liability and Third Party Disputes

Neither Infrastructure Ontario nor (except pursuant to sections 2.8 and 4.2 of this MOU) the City shall in any way be liable to the other in connection with any event, circumstance, omission, loss or liability relating to the implementation and delivery of the Project by Infrastructure Ontario and the City under this MOU.

Notwithstanding the foregoing, the City agrees to indemnify and hold harmless Infrastructure Ontario and its directors, officers, employees, representatives, agents, advisors and consultants from and against any and all liabilities, losses, omissions, fines, penalties, costs, damages, expenses (including without limitation, legal, expert and consultant fees on a full indemnity basis), causes of action, actions, claims, demands, lawsuits or other proceedings, by a third party threatened, made, sustained, brought or prosecuted, including for third party bodily injury (including death and permanent disability), personal injury and property damage, in any way based upon, or otherwise arising in connection with, the Project ("Third Party Claims"), except to the extent caused by Infrastructure Ontario's failure to comply with its obligations pursuant to this MOU and/or otherwise caused by the negligent act or omission of Infrastructure Ontario, provided however that the foregoing exception shall not apply to the extent of any insurance which responds to such Third Party Claims or which would have responded to such Third Party Claims provided that the City had complied with all applicable terms and conditions of such insurance.

The limitations of liability and indemnity in this section 4.2 shall in all cases survive any expiry or termination of this MOU, howsoever caused.

4.3 Term and Termination

This MOU shall terminate upon the earlier of the Parties' mutual written agreement to terminate the MOU or the final discharge (by performance, termination or otherwise) of the rights and obligations in respect of design, construction and maintenance of the Project of either Party under the Project Agreements.

4.4 Infrastructure Ontario Not a Crown Agent

Infrastructure Ontario declares that it will not be acting as a Crown Agent in connection with providing services to the City for the purposes of this MOU and in respect of the Project, and, accordingly, the Crown in right of the Province of Ontario will not be liable for any liability in relation to the services provided by Infrastructure Ontario to the City under this MOU.

The Parties acknowledge and agree that Infrastructure Ontario is not an agent, partner or joint venturer of the City, but rather is an independent contractor, in respect of any matter contemplated by this MOU.

4.5 Disclosure and Precedent Documents

The City acknowledges and agrees that Infrastructure Ontario has invested significant resources into the development of the Project procurement documents, agreements, project management documents and processes and other documentation created or provided by Infrastructure Ontario in relation to the management of the Project (the "Project Documentation") and accordingly:

- (a) subject only to removal of information that falls within one of the exemptions under the *Freedom of Information and Protection of Privacy Act* (Ontario) and the Municipal Freedom Information and Protection of Privacy Act (Ontario) as agreed to by Infrastructure Ontario and the City, Infrastructure Ontario may disclose the Project Documentation publicly, including by means of posting documents on Infrastructure Ontario's website;
- (b) Infrastructure Ontario and the City shall be the joint owners of all right, title and interest in the intellectual property rights (including copyright, trademark, trade secrets and all moral rights) in the Project Documentation;
- (c) subject to compliance with the *Freedom of Information and Protection of Privacy Act* (Ontario) and the Municipal Freedom of Information and Protection of Privacy Act (Ontario), Infrastructure Ontario may use the Project Documentation for its own purposes, including but not limited to, benchmarking and precedents for other infrastructure development projects; and
- (d) the Project Agreements shall contain provisions that reflect the principles in this section 4.5.

The provisions of this section 4.5 shall survive any expiry or termination of this MOU, howsoever caused.

4.6 Confidentiality

The Parties shall strictly maintain confidentiality, and secure all material information provided, directly or indirectly, by the other Party pursuant to this MOU. Subject to relevant legislation related to freedom of information or the protection of privacy and any other laws, neither Party shall directly or indirectly disclose to any person, either during or following the term of this MOU, any such material or information provided to it by the other Party without first obtaining the written consent of the Party who provided such material or information, allowing such disclosure.

4.7 Notices

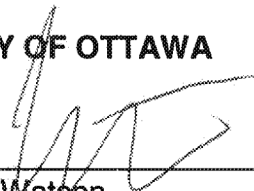
Any notices or written consents or approvals to be provided by the Parties under this MOU shall be provided to the following individuals at the following addresses:

If to the City:

Nancy Schepers, Deputy City Manager, IS and CS
Ottawa City Hall
110 Laurier Avenue West
Ottawa, Ontario
K1P 1J1
Fax: (613) 560-6028

If to Infrastructure Ontario:
Mathew Kattapuram
Senior Vice President, Civil Infrastructure
777 Bay Street, 6th Floor
Toronto, Ontario M5G 2C8
Fax: (416) 325-4646

CITY OF OTTAWA



Jim Watson
Mayor

NOV 10/11

Date of Signature



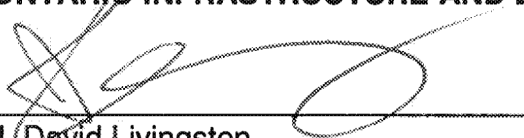
M. Rick O'Connor
City Clerk and Solicitor



Nov. 9/11

Date of Signature

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION



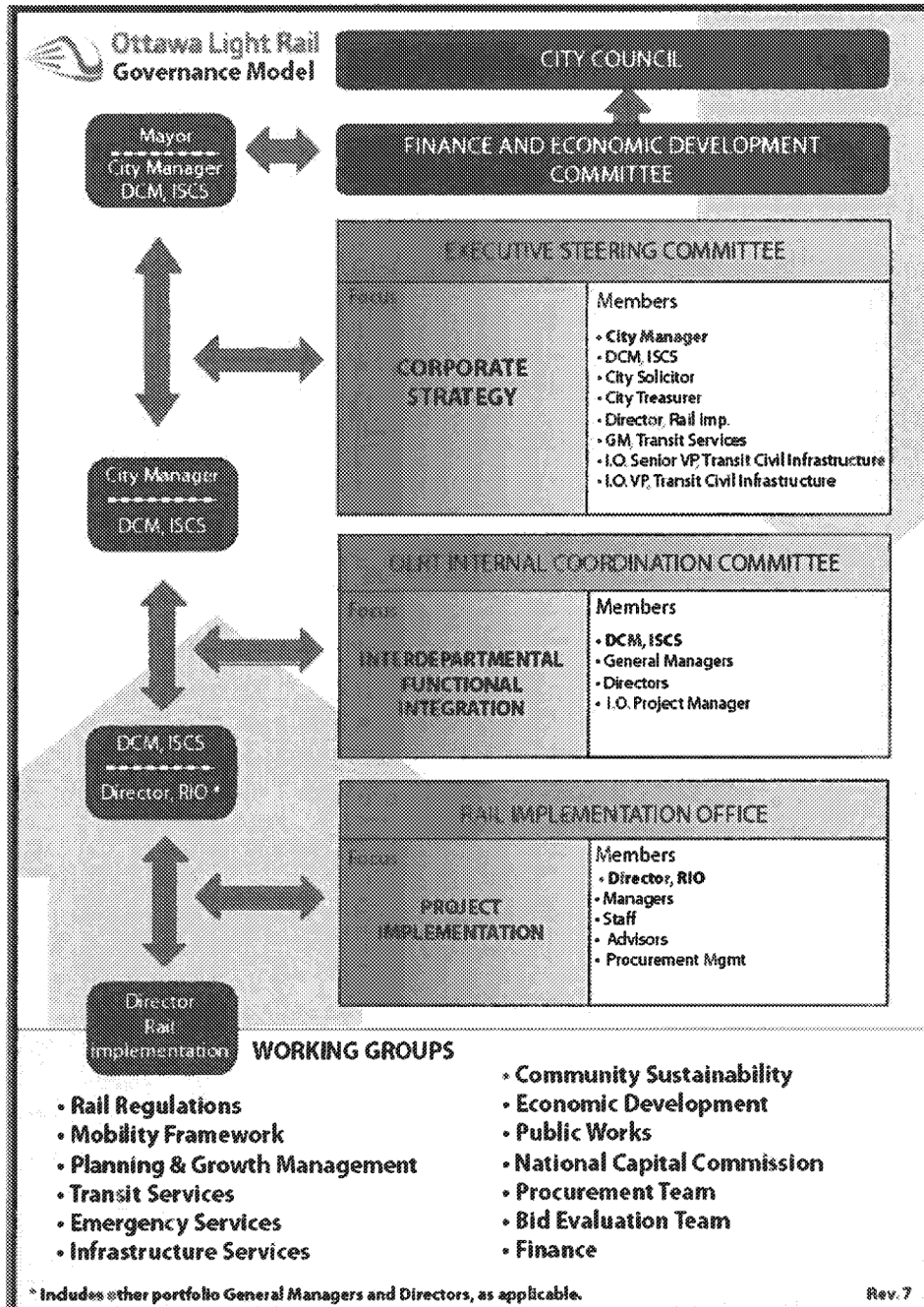
J. David Livingston
President and Chief Executive Officer
Ontario Infrastructure and Lands Corporation



November 3, 2011

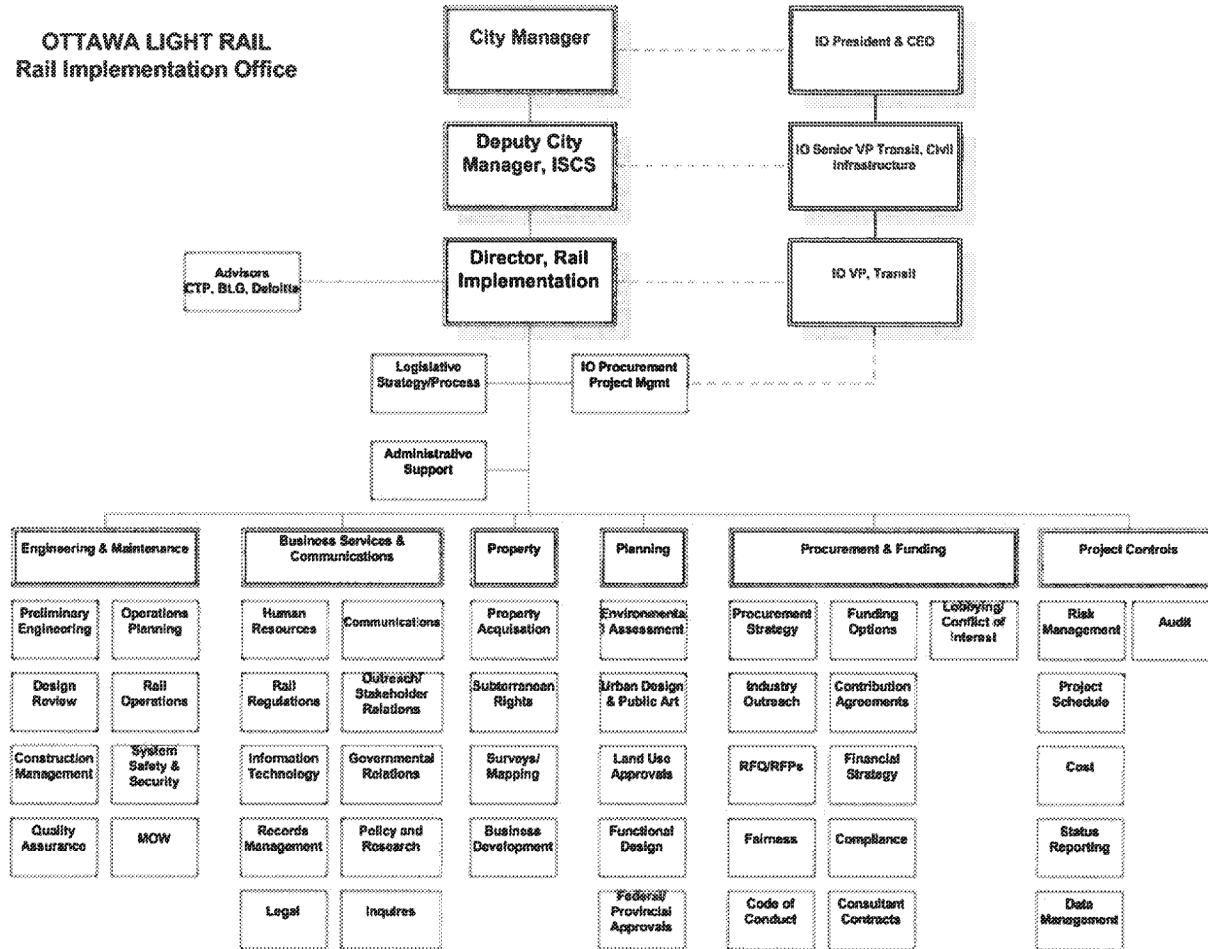
Date of Signature

Schedule "A" Governance Model



Schedule "B" Organization Chart

OTTAWA LIGHT RAIL Rail Implementation Office



Schedule "C"

OLRT Executive Steering Committee

- Kent Kirkpatrick, City Manager
- Steve Kanellakos, Deputy City Manager, City Operations
- Nancy Schepers, Deputy City Manager, Infrastructure Services Community Sustainability
- Rick O'Connor, City Clerk and Solicitor
- Marian Simulik City Treasurer
- Alain Mercier, General Manager, Transit Services
- John Jensen, Director, Rail Implementation
- Mathew Kattapuram, Senior Vice President, Civil, IO
- Rob Pattison, Vice President, Transit IO

Evaluation Team (RFQ)

- TBD

Evaluation Team (RFP)

- TBD

Procurement Team

- Bruce Beaton, IO Project Manager
- Alan Poon, IO Project Coordinator
- Daniel Farrell, Manager, Rail Funding and Procurement
- Simon Finlayson , IO Project Legal
- John Traianopolous, IO Project Finance,
- Andrew Chiu, IO Project Finance
- Remo Bucci, Deloitte
- Morty Gross, BLG
- * To be amended on an as needed basis

