



Peter Wardle
 D 416 585 8604
 pwardle@singleton.com
 Our File: 15057.006

June 1, 2022

VIA EMAIL

Ottawa Light Rail Transit Commission
 2 Bloor Street East, Suite 1802
 Toronto, ON M4W 1A8

Attention: **Kate McGrann** (*kate.mcgrann@olrtpublicinquiry.ca*)
Christine Mainville (*christine.mainville@olrtpublicinquiry.ca*)

Dear Ms. McGrann and Ms. Mainville:

Re: *Ottawa Light Rail Transit Public Inquiry – City of Ottawa - Marian Simulik*

In light of certain allegations we have become aware of as a result of the disclosure of the interview transcripts of Ricardo Cosentino and Antonio Estrada, we are writing to correct certain answers given during the interview of Marian Simulik on May 6, 2022 and to provide certain additional documents to respond to these allegations.

1. The Allegation that the City Refused to Consent to a Reduction in Liquidated Damages as between OLRTC and RTG

Ms. Simulik testified that she was unaware of a daily liquidated damages payment between OLRTC and RTG that kicks in if there have been delays. (page 110, lines 6-8). She also testified that she was not aware of any requests by RTG to the City to receive consent from the City to allow for a liquidated damages amount payment from OLRTC to RTG (page 111, line 7).

As a result of reviewing the transcript of Mr. Estrada, we have located two documents not previously produced by the City (attached) which deal with this issue:

- (a) letter dated May 23, 2018 from RTG to National Bank Financial, the Administrative Agent for the Senior Lenders making the request (**OTT0775211**). The Senior Lenders at this time consisted of four short-term lenders (Scotiabank, National Bank of Canada, Sumitomo Mitsui Banking Corporation and The Bank of Tokyo-Mitsubishi UFJ, Ltd) and the City in its capacity as long-term lender.
- (b) an email chain dated 2018-05-23 to 2018-07-12 which deals with RTG's request (**OTT0772619**). This chain includes an email from Julian Martensen of National Bank Financial dated May 25, 2018 notifying representatives of the lenders of this request. We note that this email was not sent to Ms. Simulik but to the Deputy City Treasurer, Isabelle

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Jasmin. After asking for clarification on certain items and receiving satisfactory responses from RTG, Ms. Jasmin advised Mr. Martensen by email that the City was prepared to support the requested consent. We note that Ms. Jasmin copied Ms. Simulik on her reply.

The letter at item (a) above was not initially produced as the custodian of this document was not identified as a key custodian in the City's proposal to narrow the document production at the Commission's request.

Likewise, the email chain at item (b) above was not initially produced as the custodian was not identified as a key custodian in the City's proposal to narrow the document production at the Commission's request.

We have reviewed the email chain with Ms. Simulik and she advises that it refreshes her memory that in 2018 RTG did seek consent from the Senior Lenders to reduce the liquidated damages to be paid by OLRTC to RTG and that the City advised the Administrative Agent that it approved the request.

2. The Allegation that the City Refused to Provide Consent to Waivers of Default in Connection with Draws

As a result of reviewing the transcript of Mr. Cosentino, we have also located the following documents (attached) which deal with a request by RTG in January, 2019 to the Administrative Agent for the Senior Lenders to consent to certain waivers of default (including with respect to draws) as a result of RTG's anticipated failure to meet the Senior Creditors' Longstop Date under the Credit Agreement:

- (a) Letter dated January 4, 2019 from RTG making the request (**OTT1085809**);
- (b) email chain dated January 5, 2019 in which the City was notified of the request (**OTT1085808**);
- (c) Email chain dated January 4 – 14, 2019 regarding scheduling a meeting of the Senior Lenders (**COWP0001441**).

The letter at item (a) above was not initially produced as it was not identified as materially relevant to the Commission's Terms of Reference.

The email at item (b) above was not initially produced as the custodian of this document was not identified as a key custodian in the City's proposal to narrow the document production at the Commission's request.

Privilege was initially claimed for item (c) above because the emails involved the City's counsel Geoff Gilbert; however, the City no longer claims privilege over these communications.

We have reviewed these emails with Ms. Simulik, who recalls attending a lunch at the MSF in January, 2019 with representatives of the short-term lenders and RTG. Her recollection is that the short-term lenders had already decided not to agree to waive the default. She recalls advising RTG at the meeting that the City had been prepared to support their request but that the other lenders

- 3 -

did not agree. Since the arrangements amongst the lenders required a majority to consent, the waivers were never provided.

Yours truly,
Singleton Urquhart Reynolds Vogel LLP

A handwritten signature in cursive script, appearing to read "Peter Wardle".

Peter Wardle
Partner

PCW/tl
Enclosures



23 May 2018

Peter Hepburn
National Bank Financial Inc.
130 King Street West, Suite 3200
Toronto, Ontario M5X 1J9

Henry G. Hamilton II
BNY Trust Company of Canada
320 Bay St., 11th Floor
Toronto, ON M5H 4A6

Re: OLRT - Rideau Transit Group General Partnership – Consent to Reduce Amount of Delay Liquidated Damages

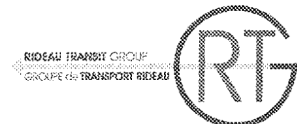
Dear Sirs;

Reference is hereby made to that certain credit agreement dated February 12, 2013 between Project Co, the Administrative Agent, National Bank of Canada, Sumitomo Mitsui Banking Corporation, the Bank of Nova Scotia, the Bank of Tokyo-Mitsubishi UFJ, Ltd., Sun Life Assurance Company of Canada, Industrial Alliance Insurance and Financial Services Inc., RBC Life Insurance Company, Stonebridge Infrastructure Debt Fund I LP, Sun Life Assurance Company of Canada Elected Master Trust Fund, the Empire Life Insurance Company, and the Collateral Agent (the "**Credit Agreement**"). Unless otherwise specified, capitalized terms that are not otherwise defined in this consent shall have those definitions given to them in the Credit Agreement.

On February 5, 2018 the Construction Contractor issued a notice confirming that Revenue Service Availability will be achieved on November 2, 2018 rather than the original CC Required Revenue Service Availability Date (as such term is defined in the Construction Contract) of May 24, 2018. Pursuant to Part 1, Section 6.1 of the Construction Contract, Construction Contractor shall pay delay liquidated damages ("**LDs**") to Project Co for a delay beyond the CC Required Revenue Service Availability Date.

Project Co wishes to waive its entitlement to collect the full amount of the LDs payable by the Construction Contractor effective from May 24, 2018 until the date that the Construction Contractor achieves CC Required Revenue Service Availability and instead has agreed to a reduction from \$124,820, excluding taxes, to \$102,245 in the amount of LDs payable to it by the Construction Contractor (the "**Reduced Delay LD Payments**").

Section 10.24 of the Credit Agreement provides that Project Co may not, among other things, waive a right in a Project Document without the consent of the Collateral Agent. While such waiver is immaterial and, as set out in **Schedule "A"** hereto, the only components of the LDs being reduced under Project Co's proposal are amounts payable to and solely for the account of Project Co or the



Maintenance Contractor, arguably, Project Co would be waiving a term of the Construction Contract by accepting Reduced Delay LD Payments from the Construction Contractor.

Therefore, Project Co hereby requests that the Collateral Agent consent to Project Co accepting the Reduced Delay LD Payments effective from May 24, 2018 until Construction Contractor achieves Revenue Service Availability.

Rideau Transit Group General Partnership:

Dwayne Mercer
Chief Financial Officer

BNY Trust Company of Canada:

Henry G. Hamilton II
Corporate Trust Administration

National Bank Financial Inc.:

Peter Hepburn
Head Infrastructure Finance
Managing Director – Fixed Income



Schedule "A"

		Total Original Amount of LD	Total Proposed Amount of Reduced LD	Total Amount of Reduction
1.	SPV construction period cost	\$17,245.00	\$13,079.00	\$4,166.00
2.	Liquidated Damages to be paid to RTM	\$46,716.00	\$28,307.00	\$18,409.00
3.	Long Term Debt service	\$30,443.00	\$30,443.00	\$0.00
4.	Loss of capital payments	\$30,416.00	\$30,416.00	\$0.00
		\$124,820.00	\$102,245.00	\$22,575.00

To: 'Martensen, Julian'[julian.martensen@nbc.ca]
Cc: Simulik, Marian[Marian.Simulik@ottawa.ca]; 'Gilbert, Geoffrey'[geoffrey.gilbert@nortonrosefulbright.com]; 'Bucci, Remo (CA - Toronto)')[rbucci@deloitte.ca]
From: Jasmin, Isabelle[/O=REGIONAL MUNICIPALITY OF OTTAWA-CARLETON/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=JASMINISBA5]
Sent: Thur 7/12/2018 9:05:19 AM (UTC-04:00)
Subject: RE: OLRT - Rideau Transit Group General Partnership – Consent to Reduce Amount of Delay Liquidated Damages

Julian;

Thank you very much for sending along this information from RTG. In order to ensure RTG is able to dedicate resources flexibly to drive timely substantial completion and achieve the new Revenue Service Availability date of November 2, 2018, and because RTG have indicated that this will create no adverse consequence to their obligations to the lenders, we are prepared to support the requested consent.

Please pass along confirmation of our support to the short term lenders and advise us of the next steps (which will presumably be the formal execution of a consent).

Let us know if you have any questions.

Isabelle Jasmin, CPA, CMA

Deputy City Treasurer, Corporate Finance | Trésorière municipale adjointe, Finances municipales
 tel:/tél: 613-580-2424, ext./poste 21312
 e-mail/courriel: isabelle.jasmin@ottawa.ca

From: Martensen, Julian <julian.martensen@nbc.ca>

Sent: Thursday, July 05, 2018 10:16 AM

To: Jasmin, Isabelle <isabelle.jasmin@ottawa.ca>

Cc: Simulik, Marian <Marian.Simulik@ottawa.ca>; 'Gilbert, Geoffrey' <geoffrey.gilbert@nortonrosefulbright.com>; 'Bucci, Remo (CA - Toronto)' <rbucci@deloitte.ca>

Subject: RE: OLRT - Rideau Transit Group General Partnership – Consent to Reduce Amount of Delay Liquidated Damages

Isabelle,

As just sent separately to you on a bilateral basis, please see the responses from RTG for the benefit of the group below:

- a) The reduction to item (a) SPV management cost will not reduce the oversight responsibilities of RTG and its sponsors as originally contemplated in the Financial Model budget.
- b) The reduction to item (b) liquidated damages to be paid to RTM will not limit or reduce the funding that RTM requires to support RTG in meeting the revised RSA date of November 2, 2018.

Sorry this took so long.

Regards,

Julian Martensen, CFA | Director

Infrastructure Finance – Fixed Income | National Bank Financial
 The Exchange Tower | 130 King Street West, 4th Floor Podium | Toronto, Ontario | M5X 1J9
 Tel [Office]: +1 (416) 869-7450 | Tel [Mobile]: +1 (416) 278-6257 | Fax: +1 (416) 869-6411
 E-mail: julian.martensen@nbc.ca

From: Jasmin, Isabelle [<mailto:isabelle.jasmin@ottawa.ca>]

Sent: June 27, 2018 7:30 PM

To: Martensen, Julian <julian.martensen@nbc.ca>

Cc: Simulik, Marian <Marian.Simulik@ottawa.ca>; 'Gilbert, Geoffrey' <geoffrey.gilbert@nortonrosefulbright.com>; 'Bucci, Remo (CA - Toronto)' <rbucci@deloitte.ca>

Subject: FW: OLRT - Rideau Transit Group General Partnership – Consent to Reduce Amount of Delay Liquidated Damages

Julian,

Have you received anything from RTG in response to this request?

Isabelle Jasmin

From: Jasmin, Isabelle
Sent: Tuesday, May 29, 2018 10:32 AM
To: 'Martensen, Julian' <julian.martensen@nbc.ca>
Cc: Simulik, Marian <Marian.Simulik@ottawa.ca>; Geoffrey Gilbert (geoffrey.gilbert@nortonrosefulbright.com) <geoffrey.gilbert@nortonrosefulbright.com>
Subject: RE: OLRT - Rideau Transit Group General Partnership – Consent to Reduce Amount of Delay Liquidated Damages

Hi Julian:

In response to the memos of May 7, 2018 and May 25, 2018 from RTG (the “Memos”), to seek the City’s consent, as the long term lender, to a reduction in the Delay Liquidated Damages amount (as defined in the Construction Contract) we had some questions and confirmations that we would ask you to follow up on with RTG on our behalf.

In the Memos, RTG explains that the proposed reduction to the Delay Liquidated Damages amount is limited to (a) management costs and savings of the SPV during the construction period and (b) a reduction in the quantum of liquidated damages to be paid to RTM, and also provides a rationale for the corresponding reductions. The City requests clarifications on these items, as follows:

a) Reduction to item (a) SPV management costs from \$17,245 to \$13,079 (per day)

The May 7, 2018 Memo explains that the reduction is achieved from i) actual cost savings as compared to the Financial Model budget, and ii) a reduction in the monthly management fee paid by RTG to its sponsors. Presumably, both of these components were included in the Financial Model budget to fund sufficient oversight responsibilities by management (RTG) and equity (RTG’s sponsors). The City therefore requests that RTG provide a confirmation and assurance that the reductions to item (a) SPV management costs will not reduce the important oversight responsibilities of RTG and its sponsors as originally contemplated in the Financial Model budget.

b) Reduction to item (b) liquidated damages to be paid to RTM from \$46,716 to \$28,307 (per day)

The May 7, 2018 Memo references that the prior notice of delay provided on February 5, 2018 by the Construction Contractor informing RTM that Revenue Service Availability will be achieved on November 2, 2018 as compared to the original date of May 24, 2018, was sufficient to mitigate impacts to RTM’s mobilization costs. The City requests that RTG provides a confirmation and assurance that the reduction to (b) liquidated damages to be paid to RTM will not limit or reduce the funding that RTM requires to support RTG in meeting the revised Revenue Service Availability of November 2, 2018.

Please let me know if you have any questions related to this request.

Thanks,

Isabelle Jasmin, CPA, CMA

Deputy City Treasurer, Corporate Finance | Trésorière municipale adjointe, Finances municipales
tel./tél: 613-580-2424, ext./poste 21312
e-mail/courriel: isabelle.jasmin@ottawa.ca

From: Martensen, Julian <julian.martensen@nbc.ca>
Sent: Friday, May 25, 2018 7:16 AM
To: Gilbert, Geoffrey <geoffrey.gilbert@nortonrosefulbright.com>; Jasmin, Isabelle <isabelle.jasmin@ottawa.ca>; Martin, Mark <Mark.Martin@ottawa.ca>; Dupuis, Simon

<Simon.Dupuis@ottawa.ca>; Chris Wing <chris.wing@scotiabank.com>; robert.bridge@scotiabank.com; Herritt, Gil <Gil.Herritt@nbc.ca>; 'Robert McClorey' <RMcClorey@us.mufg.jp>; 'Michael Tranter (MTranter@smbc-lf.com)' <MTranter@smbc-lf.com>; 'Tsewang Namgyal' <tnamgyal@us.mufg.jp>; 'Brandon_Strong@smbcgroup.com' <Brandon_Strong@smbcgroup.com>; 'R Diprinzio' <RDiprinzio@smbc-lf.com>; Melissa Chow (Scotiabank GBM) <melissa.chow@scotiabank.com>; 'Nanda Kamat' <nkamat@us.mufg.jp>; 'Kate Dorsey' <KDorsey@us.mufg.jp>; Tara A. Mackay (tmackay@torys.com) <tmackay@torys.com>; Stefan Tribelhorn <Stefan_Tribelhorn@smbcgroup.com>
Subject: FW: OLRT - Rideau Transit Group General Partnership – Consent to Reduce Amount of Delay Liquidated Damages

Good Afternoon,

Please see the attached consent request from RTG to reduce the liquidated damages payable by the construction contractor.

Would each lender please indicate to me bilaterally if they would be interested in granting this consent? As previously indicated by Tara at Tory's, this consent requires 66⅔% of all lenders.

If there are any questions, we would be pleased to assist.

Regards,

Julian Martensen, CFA | Director

Infrastructure Finance – Fixed Income | National Bank Financial
 The Exchange Tower | 130 King Street West, 4th Floor Podium | Toronto, Ontario | M5X 1J9
 Tel [Office]: (416) 869-7450 | Tel [Mobile]: (416) 278-6257 | Fax: (416) 869-6411
 E-mail: julian.martensen@nbc.ca

From: Jennifer Bell [<mailto:jennifer.bell@rideautransitgroup.ca>]

Sent: May 23, 2018 4:52 PM

To: Hepburn, Peter <peter.hepburn@nbc.ca>; Hamilton, Henry <henry.hamilton@bnymellon.com>

Cc: Martensen, Julian <julian.martensen@nbc.ca>; Dwayne Mercer <dwayne.mercer@rideautransitgroup.ca>; Antonio Estrada <antonio.estrada@rideautransitgroup.ca>; Peter Lauch <peter.lauch@rideautransitgroup.ca>

Subject: OLRT - Rideau Transit Group General Partnership – Consent to Reduce Amount of Delay Liquidated Damages

Good Afternoon Gentleman,

Please refer to the attached communication from Rideau Transit Group on the above-noted subject matter.

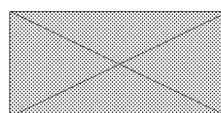
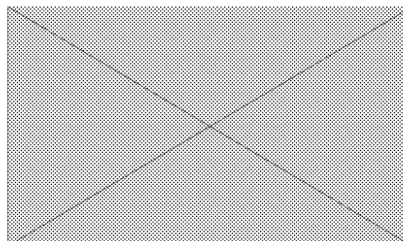
Please review, sign on the appropriate line, and return at your earliest convenience.

Should you have any questions or concerns, please contact Dwayne directly.

Thanking you in advance,
 Jennifer

Jennifer Bell

Office Manager/Document Controller
 Rideau Transit Group
 1545 Carling Avenue, Suite 406
 Ottawa, ON K1Z 8P9
 Tel: [1-613-482-8988](tel:1-613-482-8988) x 521
 Fax: 1-613-482-8989
jennifer.bell@rideautransitgroup.ca



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4 January 2019

Crawford Currie
Atkins Acuity
Woodcote Grove, Ashley Road, Epsom,
Surrey, KT18 5BW, UK

Henry G. Hamilton II
BNY Trust Company of Canada
1 York Street, 6th Floor
Toronto, ON M5J 0B6

Julian Martensen
National Bank Financial Inc.
130 King Street West, Suite 3200
Toronto, Ontario M5X 1J9

Subject: Notice and Request for Waiver

Reference: Credit Agreement Sections 10.22, 11, 16

Dear Sirs:

We refer to the credit agreement dated February 12, 2013 among, *inter alios*, Rideau Transit Group General Partnership (as Borrower), BNY Trust Company of Canada (as Collateral Agent) and National Bank Financial Inc. (as Administrative Agent) (as amended from time to time, the "**Credit Agreement**" or "**CA**"). Capitalized terms used but not defined herein will have the meanings ascribed thereto in the Credit Agreement.

The OLRT Project is nearing completion with the focus now on finalizing, testing and commissioning towards Trial Running, the final prerequisite to achieving Revenue Service Availability.

Despite the good progress being made, the Borrower must regrettably inform you that currently it is not anticipated that Revenue Service Availability (RSA) will be achieved on or before the Senior Creditor Longstop Date. If this date is missed, then in accordance with Section 11.1 (p) of the Credit Agreement, an Event of Default shall occur. You should note that the Borrower and the Construction Contractor have made a number of claims under the Project Agreement in respect of Delay Events which, if successful, would have the effect of postponing the Scheduled Revenue Service Availability Date and the Senior Creditors Longstop Date. As a result, in the Borrower's opinion, it is not possible to say with certainty at this time that a Default has occurred under the Credit Agreement in relation to this delay. Notice is therefore being provided for the sake of completeness.

Furthermore, RTG will fail to commence "Trial Running Start 21-Jan-19", an Additional Trigger Event outlined in the Final Remedial Plan. This may be considered by the Senior Creditors to be a material breach of the Final Remedial Plan in accordance with Section 11.1(w) of the Credit Agreement and therefore to constitute a Default. The Borrower has 45 days to remedy the breach



and expects to commence Trial Running within that 45 days. Again, for the sake of completeness, notice is given of a potential Default in this respect.

In addition to the above, the Senior Creditors Technical Agent has notified us that it is unable to provide the SCTA Certificate for the December draw as doing so requires that he certify "...that it is reasonable to expect that Revenue Service Availability will be achieved not later than the Senior Creditors' Longstop Date." The Borrower may also be unable to certify in its monthly Utilization Request that no Default has occurred and is continuing.

The Borrower is providing this notice of potential Defaults to you in order to ensure compliance with to Section 10.22(a) of the Credit Agreement.

The Borrower therefore requests that the Senior Creditors grant the following waivers:

1. A waiver of any Default that has occurred and the Event of Default that would occur if the Borrower fails to achieve Revenue Service Availability by the Senior Creditors Longstop Date (pursuant to sections 11.4 and 16.1(i) of the Credit Agreement).
2. A waiver of any Default that has occurred and the Event of Default that would occur if the Borrower fails to remedy the above referenced breach of the Final Remedial Plan within 45 days of the date of this letter (pursuant to sections 11.4 and 16.1(i) of the Credit Agreement).
3. A waiver of any Draw Condition that would otherwise not be satisfied as a reason of any Default referenced in this letter and a waiver of the Draw Condition requiring the SCTA to certify that it is reasonable to expect that Revenue Service Availability will be achieved not later than the Senior Creditors' Longstop Date (pursuant to section 16.1(n) of the Credit Agreement).
4. A waiver of any obligation to enforce any CC Event of Default under the Construction Contract that correlates to the Credit Agreement Defaults set out in this letter.

The Borrower believes that such waivers would best support it in its goal to achieve RSA at the earliest possible date. The Borrower has notified the City that it now anticipates achieving RSA by March 31, 2019. We believe that the RTG team remains better placed than any other contractor to achieve RSA.

The Borrower, including representatives from each of the General Partners, is prepared to meet with you at your earliest convenience to discuss the above. In the meantime, if you have any questions or require any additional information, please do not hesitate to contact the undersigned. In connection with the foregoing, the Borrower would be happy to provide you with a draft waiver instrument for the Senior Creditors to review and execute in due course.

Yours truly,

Peter Lauch, P. Eng.
 CEO
 Rideau Transit Group General Partnership

cc.: Dwayne Mercer – RTG

From: Martensen, Julian <julian.martensen@nbc.ca>
Sent: Saturday, January 5, 2019 1:54 PM
To: Gilbert, Geoffrey; Jasmin, Isabelle; Martin, Mark; Dupuis, Simon; Chris Wing; Herritt, Gil; Kalaycioglu, Dennis; 'Robert McClorey'; 'Michael Tranter (MTranter@smbc-lf.com)'; 'Tsewang Namgyal'; 'R Diprinzio'; 'Nanda Kamat'; 'Kate Dorsey'; Stefan Tribelhorn; Kevin McCormick; Meadow Wu
Cc: Hepburn, Peter; Tara A. Mackay (tmackay@torys.com)
Subject: FW: Notice and request for Waiver
Attachments: Notice and Request for Waiver.pdf

Good Afternoon,

Please see the notice and request for a waiver from RTG attached above. I have also copied Tara MacKay at Tory's, in her capacity as lenders' counsel.

The waivers that are requested are broad and far reaching. They are summarized below:

1. A waiver of any Default that has occurred and the Event of Default that would occur if the Borrower fails to achieve Revenue Service Availability by the Senior Creditors' Longstop Date
2. A waiver of any Default that has occurred and the Event of Default that would occur if the Borrower fails to remedy a breach of the Final Remedial Plan within 45 days
3. A waiver of any Draw Condition that would otherwise not be satisfied as a reason of any Default referenced in the letter and a waiver of the Draw Condition requiring the SCTA to certify that it is reasonable to expect that Revenue Service Availability will be achieved not later than the Senior Creditors' Longstop Date
4. A waiver of any obligation to enforce any Construction Contractor Event of Default under the Construction Contract that correlates to Credit Agreement Defaults

The lenders do not need to grant any of these waivers. That being said, if there is a desire to grant certain waivers, such as to allow further draws, this could certainly be discussed in isolation. In addition, if the lenders would prefer a modification to any of the waivers to suit a preferred set of conditions and/or circumstances, these could also be discussed and provided via counterproposal.

We hope to be able to discuss this, as well as the current status of the project on Tuesday, at a time to be confirmed between 11:00am and 3:00pm. Once we have meeting facilities arranged, we will be back in touch with video and teleconference details.

Please do not hesitate to reach out if there is anything that is needed in the interim.

Regards,

Julian Martensen, CFA | Director
 Infrastructure Finance – Fixed Income | National Bank Financial
 The Exchange Tower | 130 King Street West, 4th Floor Podium | Toronto, Ontario | M5X 1J9
 Tel [Office]: +1 (416) 869-7450 | Tel [Mobile]: +1 (416) 278-6257 | Fax: +1 (416) 869-6411
 E-mail: julian.martensen@nbc.ca

From: Peter Lauch [mailto:peter.lauch@rideautransitgroup.ca]
Sent: January 4, 2019 4:35 PM
To: Martensen, Julian <julian.martensen@nbc.ca>; Henry G. Hamilton II <henry.hamilton@bnymellon.com>; Currie, Crawford <Crawford.Currie@atkinsacuity.com>
Cc: Dwayne Mercer <dwayne.mercer@rideautransitgroup.ca>; Jennifer Bell <jennifer.bell@rideautransitgroup.ca>
Subject: Notice and request for Waiver

EXPÉDITEUR EXTERNE : Sois PRUDENT, en particulier avec les liens et les pièces jointes
 EXTERNAL SENDER - Be CAUTIOUS, particularly with links and attachments

Gentlemen,

In your respective capacities as Administrative Agent, Collateral Agent and Senior Creditors Technical Advisor, we are sending you the attached "Notice and Request for Waiver" letter.

Note that RTG will be proposing a meeting with the Lenders to discuss the attached.

In the meantime, should you have any questions or require any additional information please do not hesitate to contact us.

Regards,

Peter

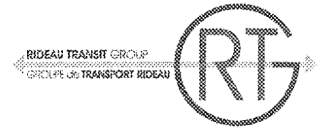
Peter Lauch, P.Eng | CEO

Rideau Transit Group General Partnership

1545 Carling Avenue, Suite 406 | Ottawa, Ontario | K1Z 8P9

Tel [Office]: +1 (613) 482-8988 x 524 | Tel [Mobile]: +1 (613) 790-1554 | Fax: +1 (613) 482-8989

E-mail: peter.lauch@rideautransitgroup.ca



4 January 2019

Crawford Currie
Atkins Acuity
Woodcote Grove, Ashley Road, Epsom,
Surrey, KT18 5BW, UK

Henry G. Hamilton II
BNY Trust Company of Canada
1 York Street, 6th Floor
Toronto, ON M5J 0B6

Julian Martensen
National Bank Financial Inc.
130 King Street West, Suite 3200
Toronto, Ontario M5X 1J9

Subject: Notice and Request for Waiver

Reference: Credit Agreement Sections 10.22, 11, 16

Dear Sirs:

We refer to the credit agreement dated February 12, 2013 among, *inter alios*, Rideau Transit Group General Partnership (as Borrower), BNY Trust Company of Canada (as Collateral Agent) and National Bank Financial Inc. (as Administrative Agent) (as amended from time to time, the "**Credit Agreement**" or "**CA**"). Capitalized terms used but not defined herein will have the meanings ascribed thereto in the Credit Agreement.

The OLRT Project is nearing completion with the focus now on finalizing, testing and commissioning towards Trial Running, the final prerequisite to achieving Revenue Service Availability.

Despite the good progress being made, the Borrower must regrettably inform you that currently it is not anticipated that Revenue Service Availability (RSA) will be achieved on or before the Senior Creditor Longstop Date. If this date is missed, then in accordance with Section 11.1 (p) of the Credit Agreement, an Event of Default shall occur. You should note that the Borrower and the Construction Contractor have made a number of claims under the Project Agreement in respect of Delay Events which, if successful, would have the effect of postponing the Scheduled Revenue Service Availability Date and the Senior Creditors Longstop Date. As a result, in the Borrower's opinion, it is not possible to say with certainty at this time that a Default has occurred under the Credit Agreement in relation to this delay. Notice is therefore being provided for the sake of completeness.

Furthermore, RTG will fail to commence "Trial Running Start 21-Jan-19", an Additional Trigger Event outlined in the Final Remedial Plan. This may be considered by the Senior Creditors to be a material breach of the Final Remedial Plan in accordance with Section 11.1(w) of the Credit Agreement and therefore to constitute a Default. The Borrower has 45 days to remedy the breach



and expects to commence Trial Running within that 45 days. Again, for the sake of completeness, notice is given of a potential Default in this respect.

In addition to the above, the Senior Creditors Technical Agent has notified us that it is unable to provide the SCTA Certificate for the December draw as doing so requires that he certify "...that it is reasonable to expect that Revenue Service Availability will be achieved not later than the Senior Creditors' Longstop Date." The Borrower may also be unable to certify in its monthly Utilization Request that no Default has occurred and is continuing.

The Borrower is providing this notice of potential Defaults to you in order to ensure compliance with to Section 10.22(a) of the Credit Agreement.

The Borrower therefore requests that the Senior Creditors grant the following waivers:

1. A waiver of any Default that has occurred and the Event of Default that would occur if the Borrower fails to achieve Revenue Service Availability by the Senior Creditors Longstop Date (pursuant to sections 11.4 and 16.1(i) of the Credit Agreement).
2. A waiver of any Default that has occurred and the Event of Default that would occur if the Borrower fails to remedy the above referenced breach of the Final Remedial Plan within 45 days of the date of this letter (pursuant to sections 11.4 and 16.1(i) of the Credit Agreement).
3. A waiver of any Draw Condition that would otherwise not be satisfied as a reason of any Default referenced in this letter and a waiver of the Draw Condition requiring the SCTA to certify that it is reasonable to expect that Revenue Service Availability will be achieved not later than the Senior Creditors' Longstop Date (pursuant to section 16.1(n) of the Credit Agreement).
4. A waiver of any obligation to enforce any CC Event of Default under the Construction Contract that correlates to the Credit Agreement Defaults set out in this letter.

The Borrower believes that such waivers would best support it in its goal to achieve RSA at the earliest possible date. The Borrower has notified the City that it now anticipates achieving RSA by March 31, 2019. We believe that the RTG team remains better placed than any other contractor to achieve RSA.

The Borrower, including representatives from each of the General Partners, is prepared to meet with you at your earliest convenience to discuss the above. In the meantime, if you have any questions or require any additional information, please do not hesitate to contact the undersigned. In connection with the foregoing, the Borrower would be happy to provide you with a draft waiver instrument for the Senior Creditors to review and execute in due course.

Yours truly,

Peter Lauch, P. Eng.
 CEO
 Rideau Transit Group General Partnership

cc.: Dwayne Mercer – RTG

From: Manconi, John
Sent: Monday, January 14, 2019 12:52 PM
To: 'Gilbert, Geoffrey'; Bucci, Remo (CA - Toronto); Simulik, Marian; Jasmin, Isabelle; bguest@boxfishgroup.com; Begin, Jocelyne; Morgan, Michael (Transit); 'Prendergast, Thomas F.'
Subject: RE: Ottawa Light Rail - Expected RSA Timing, Step-in Discussion (Lenders Only), and Conversation with RTG

Make it three please.

John Manconi

General Manager, Transportation Services Department
Directeur général, Direction générale des transports
City of Ottawa | Ville d'Ottawa
1500 St-Laurent Boulevard | 1500, boulevard St-Laurent
Ottawa, ON K1G 0Z8
(613) 580-2424 ext. | poste 52111
Mail Code | Code de courrier 17-6465
Email | Courriel john.manconi@ottawa.ca

From: Gilbert, Geoffrey <geoffrey.gilbert@nortonrosefulbright.com>
Sent: Monday, January 14, 2019 12:27 PM
To: Manconi, John <John.Manconi@ottawa.ca>; Bucci, Remo (CA - Toronto) <rbucci@deloitte.ca>; Simulik, Marian <Marian.Simulik@ottawa.ca>; Jasmin, Isabelle <isabelle.jasmin@ottawa.ca>; bguest@boxfishgroup.com; Begin, Jocelyne <Jocelyne.Begin@ottawa.ca>; Morgan, Michael (Transit) <michaelj.morgan@ottawa.ca>; 'Prendergast, Thomas F.' <Thomas.Prendergast@stvinc.com>
Subject: RE: Ottawa Light Rail - Expected RSA Timing, Step-in Discussion (Lenders Only), and Conversation with RTG

Thanks John -- I will ask them to hold two spots for us.

From: Manconi, John [<mailto:John.Manconi@ottawa.ca>]
Sent: January-14-19 11:05 AM
To: Gilbert, Geoffrey; Bucci, Remo (CA - Toronto); Simulik, Marian; Jasmin, Isabelle; bguest@boxfishgroup.com; Begin, Jocelyne; Morgan, Michael (Transit); 'Prendergast, Thomas F.'
Subject: RE: Ottawa Light Rail - Expected RSA Timing, Step-in Discussion (Lenders Only), and Conversation with RTG

Michael Morgan not Steve Cripps and myself (possibly)

Sent with BlackBerry Work
(www.blackberry.com)

From: Gilbert, Geoffrey <geoffrey.gilbert@nortonrosefulbright.com>
Date: Monday, Jan 14, 2019, 10:47 AM
To: Bucci, Remo (CA - Toronto) <rbucci@deloitte.ca>, Simulik, Marian <Marian.Simulik@ottawa.ca>, Manconi, John <John.Manconi@ottawa.ca>, Jasmin, Isabelle <isabelle.jasmin@ottawa.ca>, bguest@boxfishgroup.com <bguest@boxfishgroup.com>, Begin, Jocelyne <Jocelyne.Begin@ottawa.ca>, Morgan, Michael (Transit) <michaelj.morgan@ottawa.ca>
Subject: RE: Ottawa Light Rail - Expected RSA Timing, Step-in Discussion (Lenders Only), and Conversation with RTG

As you will have all seen, the administrative agent (National Bank) has sent a meeting invite for this Thursday January 17 from 10:30 am to 3:00 pm.

The visit will essentially be in three parts, a site visit, a lunch and then the formal meeting between the lenders and RTG. I do not have the detailed agenda but will send it along as soon as I do. I suspect the meeting portion will be scheduled for about 1 hour.

While I suspect none of us actually want to attend the site visit, Brian, Marian and I were wondering if strategically it might make good sense to send someone along from the City as a "Debbie Downer" to point out the things that aren't working or that we are worried about – "look over there is all of the plywood that may need to be replaced".

My thought was that Steve Cripps (I know he is gone but presumably he could make a quick trip back for this purpose if he is available) and/or Michael Morgan may be best placed to play that role?

Please let me know your thoughts.

From: Bucci, Remo (CA - Toronto) [<mailto:rbucci@deloitte.ca>]

Sent: January-09-19 5:31 PM

To: Gilbert, Geoffrey; Simulik, Marian; Manconi, John; Jasmin, Isabelle; bguest@boxfishgroup.com; Begin, Jocelyne; Morgan, Michael (Transit)

Subject: RE:Ottawa Light Rail - Expected RSA Timing, Step-in Discussion (Lenders Only), and Conversation with RTG

Thanks Geoff. I can make the day work except for 1:30 to 3 timeslot.

From: Gilbert, Geoffrey <geoffrey.gilbert@nortonrosefulbright.com>

Sent: Wednesday, January 9, 2019 1:43 PM

To: Simulik, Marian <Marian.Simulik@ottawa.ca>; Manconi, John <John.Manconi@ottawa.ca>; Jasmin, Isabelle <isabelle.jasmin@ottawa.ca>; bguest@boxfishgroup.com; Bucci, Remo (CA - Toronto) <rbucci@deloitte.ca>; Begin, Jocelyne <Jocelyne.Begin@ottawa.ca>; Morgan, Michael (Transit) <michaelj.morgan@ottawa.ca>

Subject: [EXT] RE: Ottawa Light Rail - Expected RSA Timing, Step-in Discussion (Lenders Only), and Conversation with RTG

Latest updated for everyone – they are zeroing in on Thursday January 17 – time and location still being determined.

From: Simulik, Marian [<mailto:Marian.Simulik@ottawa.ca>]

Sent: January-09-19 6:55 AM

To: Gilbert, Geoffrey; Manconi, John; Jasmin, Isabelle; bguest@boxfishgroup.com; rbucci@deloitte.ca; Begin, Jocelyne; Morgan, Michael (Transit)

Subject: RE: Ottawa Light Rail - Expected RSA Timing, Step-in Discussion (Lenders Only), and Conversation with RTG

Next week is almost impossible for me as I have 24 budget meetings already scheduled. Having said that, if it is in Ottawa there is a chance that I would be able to attend if it falls into some of the hour-and-a-half slots I have available. If you propose a Time I will let you know if it works.

Sent with BlackBerry Work (www.blackberry.com)

From: "Gilbert, Geoffrey" <geoffrey.gilbert@nortonrosefulbright.com>

Sent: Jan 8, 2019 5:20 PM

To: "Manconi, John" <John.Manconi@ottawa.ca>; "Simulik, Marian" <Marian.Simulik@ottawa.ca>; "Jasmin, Isabelle" <isabelle.jasmin@ottawa.ca>; bguest@boxfishgroup.com; "Bucci, Remo (CA - Toronto)" <rbucci@deloitte.ca> (rbucci@deloitte.ca) (rbucci@deloitte.ca) (rbucci@deloitte.ca)" <rbucci@deloitte.ca>; "Begin, Jocelyne" <Jocelyne.Begin@ottawa.ca>; "Morgan, Michael (Transit)" <michaelj.morgan@ottawa.ca>

Subject: FW: Ottawa Light Rail - Expected RSA Timing; Step-in Discussion; and Conversation with RTG

Thanks for participating in today's call, you'll see the follow up note from Julian below.

Can you let me know if you prefer Ottawa or Toronto and if any times next week would be non-starters at your end.

I will then consolidate a response for Julian.

From: Martensen, Julian [mailto:julian.martensen@nbc.ca]

Sent: January-08-19 3:10 PM

To: Xavier Smith; Simulik, Marian; Jonathan Cho; Adam Sherman; Morgan, Michael (Transit); Manconi, John; Begin, Jocelyne; Xavier Smith; Simulik, Marian; Jonathan Cho; Adam Sherman; Morgan, Michael (Transit); Manconi, John; Begin, Jocelyne; Tara A. Mackay (tmackay@torys.com); Gilbert, Geoffrey; Jasmin, Isabelle (isabelle.jasmin@ottawa.ca); Martin, Mark; Dupuis, Simon; Chris Wing; Herritt, Gil; Kalaycioglu, Dennis; 'Robert McClorey'; 'Michael Tranter (MTranter@smbc-if.com)'; 'Tsewang Namgyal'; 'R Diprinzio'; 'Nanda Kamat'; 'Kate Dorsey'; Stefan Tribelhorn; Kevin McCormick; Meadow Wu; Gilbert, Geoffrey; Jasmin, Isabelle (isabelle.jasmin@ottawa.ca); Martin, Mark; Dupuis, Simon; Chris Wing; 'Robert McClorey'; 'Michael Tranter (MTranter@smbc-if.com)'; 'Tsewang Namgyal'; 'R Diprinzio'; 'Nanda Kamat'; 'Kate Dorsey'; Stefan Tribelhorn; Kevin McCormick; Meadow Wu

Cc: Hepburn, Peter

Subject: RE: Ottawa Light Rail - Expected RSA Timing, Step-in Discussion (Lenders Only), and Conversation with RTG

Good Afternoon,

Thank you for making the time to join the discussion on the requested waivers, Revenue Service Availability Timing, and the potential for step-in this afternoon.

As discussed, we would like to arrange a meeting with RTG for next week. We will draft a proposed agenda for your comment before distribution to RTG, but in the meantime, I would appreciate it if a representative from each party would provide me with their preferences for a meeting in Toronto or Ottawa, as well as any restrictions around attendance, whether in person, or over the phone. Please respond to me bilaterally to avoid congestion in everyone's email inboxes.

Please see the email with a similar request that was sent to RTG attached above.

If there are any further requests in the interim, we would be pleased to assist.

Regards,

Julian Martensen, CFA | Director

Infrastructure Finance – Fixed Income | National Bank Financial
The Exchange Tower | 130 King Street West, 4th Floor Podium | Toronto, Ontario | M5X 1J9
Tel [Office]: +1 (416) 869-7450 | Tel [Mobile]: +1 (416) 278-6257 | Fax: +1 (416) 869-6411
E-mail: julian.martensen@nbc.ca

From: Martensen, Julian

Sent: January 4, 2019 3:35 PM

To: 'Gilbert, Geoffrey' <geoffrey.gilbert@nortonrosefulbright.com>; 'Jasmin, Isabelle (isabelle.jasmin@ottawa.ca)' <isabelle.jasmin@ottawa.ca>; 'Martin, Mark' <mark.martin@ottawa.ca>; 'Dupuis, Simon' <simon.dupuis@ottawa.ca>; 'Chris Wing' <chris.wing@scotiabank.com>; Herritt, Gil <Gil.Herritt@nbc.ca>; Kalaycioglu, Dennis <dennis.kalaycioglu@nbc.ca>; 'Robert McClorey' <RMcClorey@us.mufg.jp>; 'Michael Tranter (MTranter@smbc-if.com)' <MTranter@smbc-if.com>; 'Tsewang Namgyal' <tnamgyal@us.mufg.jp>; 'R Diprinzio' <RDiprinzio@smbc-if.com>; 'Nanda Kamat' <nkamat@us.mufg.jp>; 'Kate Dorsey' <KDorsey@us.mufg.jp>; 'Stefan Tribelhorn' <Stefan.Tribelhorn@smbcgroup.com>; 'Kevin McCormick' <Kevin.McCormick@smbcgroup.com>; 'Meadow Wu' <Meadow.Wu@scotiabank.com>

Cc: Hepburn, Peter <peter.hepburn@nbc.ca>

Subject: Ottawa Light Rail - Expected RSA Timing, Step-in Discussion (Lenders Only), and Conversation with RTG

Good Afternoon,

Please note the attached correspondence which indicates that RTG expects the project to achieve revenue service availability on or before March 31, 2019. The outside portion of this range indicates that it is likely the work will not be complete prior to the senior creditors' longstop date (February 24, 2019).

It would be useful to circle-up as a group to discuss this timing, any associated further draws for project costs (and any associated waivers), the mechanics of a potential step-in (should lenders wish to exercise their rights), and a potential lender meeting with RTG.

Would the lenders please indicate if there is a desire for Tory's to prepare a short-form memo on the logistics of a potential step-in in advance of any group discussion? If so, Tory's had indicated to me that it would be comfortable doing this work based on discussions I had with Tory's in late December.

Would the lender group please indicate if it can accommodate a meeting in one of the following time slots next week?

- Tuesday January 8th between 11:00am and 3:00pm
- Wednesday January 9th between 1:30pm and 5:00pm
- Friday January 11th between 11:00am and 4:00pm

Please have one representative for each lender respond to me bilaterally to cut down on email traffic.

If there is anything else that is needed in the near term, I would be pleased to assist.

Regards,

Julian Martensen, CFA | Director

Infrastructure Finance – Fixed Income | National Bank Financial
 The Exchange Tower | 130 King Street West, 4th Floor Podium | Toronto, Ontario | M5X 1J9
 Tel [Office]: +1 (416) 869-7450 | Tel [Mobile]: +1 (416) 278-6257 | Fax: +1 (416) 869-6411
 E-mail: julian.martensen@nbc.ca

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