

Infrastructure Ontario

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April 20, 2009

Mr. Kent Kirkpatrick
 City Manager
 The City of Ottawa
 110 Laurier Avenue West
 Ottawa, ON
 K1P 1J1

Dear Mr. Kirkpatrick

Re: Terms of Reference Detailing Ontario Infrastructure Projects Corporation's ("Infrastructure Ontario" or "IO") Engagement by The City of Ottawa ("The City of Ottawa" or "Ottawa") in relation to the Ottawa LRT Project (the "Project")

1. Background

Further to our meetings, I would like to take this opportunity to formally confirm the terms of the relationship between The City of Ottawa and Infrastructure Ontario. Infrastructure Ontario's mandate centers on the use of Alternative Financing and Procurement ("AFP") methods to deliver large public infrastructure projects in Ontario. AFP selectively draws upon private sector expertise and resources related to design, construction, financing and/or maintenance/operations to ensure that infrastructure projects are delivered on-time and on-budget and within the project owner's specifications while risks are allocated to the party best able to manage and mitigate them.

Through the *Building a Better Tomorrow Framework* (the "*Framework*"), the Province of Ontario has established a comprehensive framework to guide the Ontario Government, municipalities, and broader public sector partners in choosing the best options for planning, financing and procuring public infrastructure assets. The *Framework* establishes clear guidelines and is based on five fundamental principles, namely, the public interest is paramount; value for money must be demonstrable; appropriate public control/ownership must be preserved; accountability must be maintained; and all processes must be transparent. Accordingly, Infrastructure Ontario is committed to delivering the Services as defined in section 2 under this Agreement in accordance with the *Framework*.

The City of Ottawa has decided to explore using an AFP approach in delivery of the LRT Project and wishes to formally retain Infrastructure Ontario to provide pre-transactional advice by providing the Services set out in section 2 of this letter agreement (the "Agreement").

2. Scope of Infrastructure Ontario's Services

- (a) The City of Ottawa hereby retains Infrastructure Ontario to provide the Services as further described in sub-section 2(b) of this Agreement.
- (b) As an advisor, Infrastructure Ontario will provide the following Services to The City of Ottawa in developing a business case comparing various AFP approaches against a traditional procurement approach:
 - (i) review of baseline assumptions related to the Project, including scope, schedule and budget, prepared by the City of Ottawa in accordance with templates for the provision of data that will be supplied to Ottawa by Infrastructure Ontario;
 - (ii) review of the Project's projected construction, operating and lifecycle costs provided by Ottawa;
 - (iii) quantification of project risks sufficient to be applied to a proprietary top-down transit risk matrix employed by Infrastructure Ontario as an input to the preliminary Value for Money assessment;
 - (iv) preparation of an analytical model of various AFP approaches versus traditional public-sector procurement approaches;
 - (v) development of a shadow-bid indicative of expected responses from bidders under the AFP approach, including a description of likely project financing assumptions and to assess if positive Value for Money can be achieved for the Project;
 - (vi) assessment of the readiness of the Project to proceed using an AFP approach and development of proposed timelines;
 - (vii) participation in approximately five (5) meetings to be held between representatives from The City of Ottawa and Infrastructure Ontario; and
 - (viii) a confidential report indicating IO's analysis and recommendations regarding the financing and procurement approach for the Project.

3. Term

- (a) This Agreement shall commence on the date hereof and shall expire on December 31, 2009 ("**Term**"). The Term may be extended by mutual written consent of the parties hereto.
- (b) IO will complete and submit its analysis for the Project within eight weeks of receiving such information from The City of Ottawa as IO may require, regarding the Project's scope, budget and schedule details, in a format consistent with IO's Request for Information Template and including any subsequent clarifications as may be required. Upon receipt of all such information, IO will transmit a notice of commencement to the City of Ottawa signifying the start date of the said eight week period.

4. Termination

Either Infrastructure Ontario or The City of Ottawa may terminate this engagement for any reason upon delivery of written notice to that effect. The City of Ottawa will reimburse Infrastructure Ontario for any services provided up to the date of termination within 30 (thirty) days of such termination.

5. Fees

Infrastructure Ontario, a Crown Agency of the Province of Ontario, operates on a cost-recovery basis. As such, IO agrees to provide the Services to The City of Ottawa on a fee-for-service basis on the terms and conditions set out below:

- (i) both parties acknowledge and agree that an advisory fee shall be payable to Infrastructure Ontario by The City of Ottawa only in the event that IO determines in its final report issued in accordance with sub-section 2(b) hereunder that the delivery of the Project through AFP would provide demonstrable value for money to the public sector;
- (ii) provided that IO has concluded in its final report that value for money has been demonstrated, the advisory fee for this engagement will be up to a maximum of \$75,000.00 (Seventy Five Thousand Canadian Dollars) plus reasonable disbursements (collectively, the "*Fee*"), to be paid by The City of Ottawa by cheque payable to "*Ontario Infrastructure Projects Corporation*" within ten (10) business days of the delivery of the final report;
- (iii) the Fee outlined above is exclusive of any costs associated with the specific implementation of the Project as an AFP project or any external consultant costs which, subject to The City of Ottawa's prior approval, would be billed to The City of Ottawa on a pass-through basis;

- (iv) the provision of any additional services by Infrastructure Ontario beyond those described hereunder will be subject to such additional fees and delivery requirements as the parties hereto may agree to; and
- (v) in the event that the Project is ultimately assigned to Infrastructure Ontario by the Minister of Energy and Infrastructure the amount paid by The City of Ottawa in connection with the delivery of the Project (as may be agreed to between the parties) shall be reduced by the amount paid by The City of Ottawa for the Services provided hereunder.

6. Confidentiality

Both Parties agree to maintain strict confidentiality in respect of all materials exchanged and shall take all such reasonable measures as are necessary to secure all information provided, directly or indirectly, by the other Party pursuant to this Agreement. Subject to the *Freedom of Information and Protection of Privacy Act*, neither Party shall directly or indirectly disclose to any person, either during or following the term of this Agreement, 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. The obligations contained in this section shall survive the termination or expiry of this Agreement.

7. Intellectual Property

- (a) Infrastructure Ontario retains all intellectual property rights (including copyright) in everything developed, designed or created by it during the course of providing the Services to The City of Ottawa including any advice or other communications of any kind provided to The City of Ottawa in any form (written or otherwise). Infrastructure Ontario shall retain such intellectual property rights subsequent to the expiration of this Agreement.
- (b) The City of Ottawa shall have the full right to use any materials prepared by Infrastructure Ontario for its internal purposes in the course of providing the Services within its own organization.
- (c) The City of Ottawa shall seek the written consent of Infrastructure Ontario if it wishes to use any materials or advice prepared by Infrastructure Ontario for any other purposes not described in section 7 (b) above.
- (d) The obligations contained in this section shall survive the termination or expiry of this Agreement.

8. Communications

No public announcements or press release disseminated by The City of Ottawa concerning the Project shall make reference to Infrastructure Ontario without the prior written consent and approval of Infrastructure Ontario. Infrastructure Ontario shall not make any public announcement or issue any press release concerning the Project without the prior written consent and approval of The City of Ottawa.

9. Indemnities from The City of Ottawa

To the fullest extent permitted by law, The City of Ottawa shall indemnify and hold harmless Infrastructure Ontario, its officers, directors, employees and agents (the "**Indemnified Parties**") from and against all (a) claims and causes of action, pending or threatened, of any kind (whether based in contract, tort or otherwise) by third parties or by whomever made, including any affiliates of The City of Ottawa, related to or arising out of the advice provided to The City of Ottawa in relation to the Services, and (b) liabilities, losses, damages, costs and expenses (including, without limitation, legal fees and disbursements) suffered or incurred by any of the Indemnified Parties in connection with any claims or causes of action described in sub-section (a) above. The obligations contained in this section shall survive the termination or expiry of this Agreement.

10. No Indemnities from Infrastructure Ontario

Notwithstanding anything else in this Agreement, any express or implied reference to Infrastructure Ontario providing an indemnity or being subject to any other form of contingent liability that would directly or indirectly increase the contingent liabilities of the Province of Ontario, whether at the time of execution of this Agreement or at any time during the period this Agreement is in force, shall be void and of no legal effect.

11. Application of *Freedom of Information and Protection of Privacy Act* ("FIPPA**")**

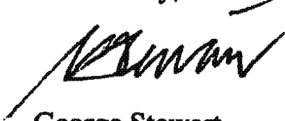
The City of Ottawa and Infrastructure Ontario acknowledge and agree that *FIPPA* applies to and governs all records pertaining to the Project (subject to the list of exceptions specifically set out in *FIPPA*) and may require the disclosure of such records to third parties. Furthermore, The City of Ottawa and Infrastructure Ontario agree that the provisions of this section shall survive the termination of the engagement.

12. Entire Agreement

The Agreement constitutes the entire agreement between the parties with regard to the provision of the Services contemplated hereunder and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution of the Agreement.

If you have any questions or concerns regarding these terms of reference, please call me directly at (416) 327-5695. If you agree with the terms of Infrastructure Ontario's engagement, please sign the acknowledgement below and return a copy of this letter to my attention. It will be our pleasure to work with you on this interesting assignment.

Yours truly,

A handwritten signature in black ink, appearing to read "G. Stewart", with a horizontal line above it.

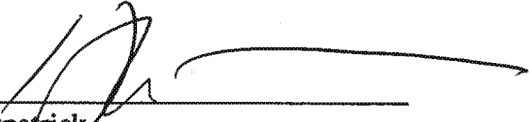
George Stewart
Senior Vice President, Project Assessment Division
Infrastructure Ontario

ACKNOWLEDGEMENT

I hereby agree on the date first written above to the terms of this Agreement on behalf of The City of Ottawa and have the requisite authority to bind The City of Ottawa.

APPROVED FOR EXECUTION


CITY SOLICITOR



Kent Kirkpatrick
City Manager
City of Ottawa