

Ottawa Light Rail Commission

Kent Kirkpatrick
on Monday, May 30, 2022



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6	OTTAWA LIGHT RAIL COMMISSION
7	CITY OF OTTAWA - KENT KIRKPATRICK
8	MAY 30, 2022
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15	--- Held via Zoom Videoconferencing, with all
16	participants attending remotely, on the 30th day of
17	May, 2022, 12:00 p.m. to 2:00 p.m.
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1 COMMISSION COUNSEL:

2 Kate McGrann, Co-Lead Counsel Member

3 Emily Young, Litigation Counsel Member

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5 PARTICIPANTS:

6 Kent Kirkpatrick: City of Ottawa

7 Peter Wardle, Betsy Segal: Singleton Urquhart

8 Reynolds Vogel LLP

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11 Also Present:

12 Deana Santedicola, Stenographer/Transcriptionist

13 Alicia Sims, Virtual Technician

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INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE/LINE NO.
1	Curriculum Vitae of Kent J. Kirkpatrick.....	6/25

* * The following is a list of documents undertaken to be produced, items to be followed up on, or questions refused * *

INDEX OF UNDERTAKINGS

The documents to be produced are noted by U/T and appear on the following page/line: [None]

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages: [None]

1 -- Upon commencing at 12:00 p.m.

2

3 KENT KIRKPATRICK; AFFIRMED.

4 KATE McGRANN: Good afternoon, my name
5 is Kate McGrann, I am one of the Co-Lead Counsel
6 from the Ottawa Light Rail Transit Public Inquiry.

7 I am joined this afternoon by my
8 colleague Emily Young, who is a member of the
9 Commission Counsel Team.

10 The purpose of today's interview is to
11 obtain your evidence under oath or solemn
12 declaration for use at the Commission's public
13 hearings.

14 This will be a collaborative interview
15 such that my co-counsel, Ms. Young, may intervene
16 to ask certain questions. If time permits, your
17 counsel may also ask follow-up questions at the end
18 of this interview. This interview is being
19 transcribed, and the Commission intends to enter
20 this transcript into evidence at the Commission's
21 public hearings either at the hearings or by way of
22 procedural order before the hearings commence.

23 The transcript will be posted to the
24 Commission's public website, along with any
25 corrections made to it, after it is entered into

1 evidence. The transcript, along with any
2 corrections later made to it, will be shared with
3 the Commission's participants and their Counsel on
4 a confidential basis before being entered into
5 evidence.

6 You will be given the opportunity to
7 review your transcript and correct any typos or
8 other errors before the transcript is shared with
9 the participants or entered into evidence. Any
10 non-typographical corrections made will be appended
11 to the transcript.

12 Pursuant to section 33(6) of the Public
13 Inquiries Act (2009), a witness at an inquiry shall
14 be deemed to have objected to answer any question
15 asked of him or her upon the ground that his or her
16 answer may tend to incriminate the witness or may
17 tend to establish his or her liability to civil
18 proceedings at the instance of the Crown or of any
19 person, and no answer given by a witness at an
20 inquiry shall be used or be receivable in evidence
21 against him or her in any trial or other
22 proceedings against him or her thereafter taking
23 place other than a prosecution for perjury in
24 giving such evidence.

25 As required by section 33(7) of that

1 Act, you are hereby advised that you have the right
2 to object to answer any question under Section 5 of
3 the Canada Evidence Act.

4 If at any point during our interview
5 today you need to take a break, just let us know
6 and we will pause the recording.

7 KENT KIRKPATRICK: Thank you.

8 KATE McGRANN: For starters, in advance
9 of the interview, we asked your Counsel to share a
10 copy of your transcript. I am just going to show
11 you a document.

12 Are you able to see the document I am
13 showing you on the screen?

14 KENT KIRKPATRICK: I am.

15 KATE McGRANN: I am just going to
16 scroll through it, and you can let me know. My
17 question for you, just so you know, is do you
18 recognize this document?

19 KENT KIRKPATRICK: Yes.

20 KATE McGRANN: And is this a copy of
21 your CV?

22 KENT KIRKPATRICK: Yes.

23 KATE McGRANN: I am going to stop
24 sharing that and we'll enter that as Exhibit 1.

25 EXHIBIT NO. 1: Curriculum Vitae

1 of Kent J. Kirkpatrick.

2 KATE McGRANN: You were the City
3 Manager, I understand, from 2004 to 2016 for the
4 City of Ottawa; is that right?

5 KENT KIRKPATRICK: Yes.

6 KATE McGRANN: When did you leave that
7 position in 2016?

8 KENT KIRKPATRICK: I believe it was in
9 March of 2016.

10 KATE McGRANN: Before the work that you
11 did on Stage 1 of the Ottawa Light Rail Transit
12 System, did you have any prior experience on any
13 rail projects?

14 KENT KIRKPATRICK: Yes. The City
15 had -- you may be familiar with this. I think it
16 is relevant background. But the City had
17 undertaken to procure the construction of a
18 north-south light rail, and that went all the way
19 through -- it had been approved by Council, but
20 then subsequently after the election in 2006, I
21 believe, Council cancelled the contract prior to
22 the initiation of construction.

23 I had been involved for the two years I
24 was City Manager in the executive oversight of that
25 procurement.

1 KATE McGRANN: Okay. And then prior to
2 the Stage 1 project, did you have any P3
3 experience?

4 KENT KIRKPATRICK: Very limited.

5 KATE McGRANN: Would you provide us
6 with an overview of your role in the procurement
7 phase of the Stage 1 project?

8 KENT KIRKPATRICK: So as City Manager,
9 you know, I had responsibility for all operations
10 of the City. Of course most of the management of
11 that would be delegated.

12 But key projects where Council
13 priorities like this light rail project I was
14 expected to have more oversight on, and I would
15 characterize my role as being the lead of the
16 executive oversight over the procurement of the
17 project. And I was there for some of the
18 initiation of the construction, but I would
19 say -- so Nancy Schepers, my Deputy City Manager,
20 who also had direct executive responsibility for
21 the project, we would talk about it in our --
22 obviously it would be one of our key topics of
23 discussion in our biweekly meetings.

24 There was also -- I Chaired an
25 Executive Steering Committee over the project that

1 I am sure you are familiar with.

2 And then from time to time, if there
3 were significant issues that required my attention,
4 either Nancy or other members of the City's Project
5 Team, management team, would bring them to my
6 attention. You know, as an example, the agreement
7 we had with Infrastructure Ontario, there was a
8 decision escalation matrix in that agreement and,
9 you know, decisions need to be made on a timely
10 basis for projects like these to stay on schedule.
11 And most of those decisions would be made between
12 John Jensen and his counterparts on the consulting
13 teams that worked for us, and then eventually after
14 the procurement with the consortium teams.

15 But during the procurement phase, if
16 there were issues with respect to the development
17 of the Project Agreement that John and his
18 counterparts couldn't agree on, the agreement with
19 IO required those to be escalated to myself and the
20 CEO of IO on a timely basis.

21 So that is probably a key example of
22 some of the decisions I -- or issues that I would
23 be involved with, decisions and otherwise.

24 There was also stakeholder relations.
25 If Nancy was having difficulty -- there was a lot

1 of work with the NCC, both through the planning and
2 the procurement phases of light rail, and a lot of
3 that, just given the nature of the relationship
4 between the City and the NCC, I would need to get
5 involved with, with the CEO and the NCC, or another
6 example might be the Vice President of the
7 University of Ottawa. You know, a lot of public
8 sector stakeholders, sometimes I would need to get
9 involved in the issue resolution with them.

10 KATE McGRANN: And the NCC is the
11 National Capital Commission?

12 KENT KIRKPATRICK: Yes, yeah.

13 KATE McGRANN: And just to clarify, the
14 biweekly meetings that you had with Ms. Schepers,
15 was that once every two weeks or twice a week?

16 KENT KIRKPATRICK: Sorry, yeah, no,
17 once every two weeks. And you know, frankly,
18 they -- it would depend on the issues of the month
19 as well how frequently we would meet.

20 KATE McGRANN: In terms of significant
21 issues that you described as the agreement with IO
22 requiring it to be escalated to you, do you recall
23 any specific instances of issues that were
24 escalated to you under that process?

25 KENT KIRKPATRICK: I may need to pause

1 for awhile with some of these questions because, of
2 course, it was -- especially the procurement phase
3 was, you know, ten or eleven years ago.

4 One example that does quickly come to
5 my mind, and I am not sure if David Livingston was
6 there at the time. This was later on in the
7 procurement process, so his -- this was probably
8 after Livingston left, and it was -- I have
9 forgotten the fellow's name that was acting.

10 But there was an issue with respect to
11 the issue related to the geo-technical risk of the
12 project. That was something that was of
13 significant concern to the City right from the
14 get-go, you know, what risk did this tunnel pose.

15 And we had developed -- you know, I
16 had -- there had been a commitment made to Mayor
17 and Council that we would ensure that the Project
18 Agreement managed that risk as effectively as it
19 could be from the City's perspective.

20 You are probably familiar with there
21 was -- a significant part of the Project Agreement
22 was developed by our team that -- and I can't
23 remember the specifics of it, the details of it,
24 but basically, you know, the proponents were
25 awarded points depending on whether they accepted

1 the full geo-technical risk of the tunnel
2 construction or not.

3 That was an issue that IO felt it could
4 lead to the project becoming -- I forget exactly
5 the term, but I think it was something like
6 unbankable; in other words, the private sector
7 would not accept that risk or, you know, the
8 financial institutions or their boards would not
9 accept the equity or the third party financing.
10 They wouldn't put it on the table, that that risk
11 would be deemed to be too significant.

12 We had a different view. We felt that
13 we should attempt that, and if they were right, we
14 would find out. You know, the procurement process
15 would come to a halt and we would need to go back
16 to the table.

17 But that was a bit of a significant
18 point of contention I think between John and his
19 counterparts and Nancy and her counterparts, and
20 eventually I needed to speak to -- his first name
21 was Antonio. I forget the last name. But that is
22 one that I remember where that section of the
23 agreement between IO and the City was invoked.

24 KATE McGRANN: And with respect to that
25 particular item, I understand that IO was

1 expressing concerns that it may render the project
2 unbankable. Did IO express any other concerns
3 about the implications of the risk transfer that
4 the City was looking to make?

5 KENT KIRKPATRICK: Not that I recall.
6 That was -- they were -- and I remember my
7 perceptions at the time, but as I said, I didn't
8 agree with IO on it, and I remember thinking at the
9 time that perhaps they were more concerned about
10 their reputation because, of course, they were the
11 centre of expertise in Ontario and they took very
12 seriously, and rightly so, you know, the success
13 that they had in terms of being able to conduct
14 successful alternative finance and procurement
15 efforts on behalf of the public sector in Ontario,
16 and I remember them -- I thought that they were
17 more perhaps concerned about, you know, a huge
18 amount of time and effort and everything else going
19 into a procurement process and at the end there
20 were no acceptable bids or no bids.

21 And whereas we felt that it was an
22 important enough issue that we should test to see
23 if the private sector would accept that risk.

24 Related to that -- and that was
25 something that we discussed even before, you know,

1 way early in the process. I remember speaking to
2 the CEO of an engineering firm in Ontario that had
3 been involved in the previous light rail project
4 about, you know, just what can you tell me about
5 the risk that this tunnel presents. And his name
6 was Bill Langdon, and he actually arranged
7 for -- you know, he said, Look, the world has
8 changed a lot in the three or four years since the
9 last project. This project will be bid by
10 consortiums with multinational companies. If there
11 is a tunnel, there will be Spanish companies
12 involved. They excel at that.

13 And he actually arranged for some
14 representatives of some of those companies to come
15 in and talk to us about what their perspective was
16 related to the risk of a tunnel being constructed.

17 So very early on, we were very focussed
18 on the risk of the tunnel and ensuring that the
19 City was -- well, in some of the discussions in the
20 development of the Project Agreement with the
21 consortiums, and it may have even been in that
22 discussion or meeting that I was telling you about
23 that Bill Langdon set up, I remember being told,
24 Look, the more information we have about what is
25 actually in the ground in that alignment, the

1 greater the acceptability of the risk will be to
2 the private consortium.

3 So you know -- I can't remember the
4 magnitude of it, but I know we did a lot more
5 drilling and testing than had originally been
6 contemplated in order that the private sector
7 consortiums would have, you know, extensive data on
8 the geo-technical realities of that alignment.

9 Anyway, that is -- but I don't recall
10 anything other than this is going -- this could
11 likely result in us not receiving bids or bids that
12 are way out of our range in terms of the
13 affordability construct, which is also, I am sure
14 you are aware, a big piece of how we built the
15 Project Agreement. You know, if they were able to
16 come within what we had established as an
17 affordability level for the project for the City,
18 they would have more points than if they were not
19 able to stay within that affordability limit.

20 KATE McGRANN: Any other takeaways that
21 you recall from the discussions that Mr. Langdon
22 coordinated for you about the geo-technical risk?

23 KENT KIRKPATRICK: Recollections?
24 We -- at the time I think the planners and the
25 engineering consultants that were involved were

1 envisioning I think -- I remember seeing slides of,
2 you know, one large tunnel that was bifurcated and
3 there were two platforms in the tunnel.

4 And I remember some -- I think it was
5 Acciona, the rep saying we would probably look at
6 two tunnels side by side versus one big one. I
7 remember that being a thought that was expressed by
8 them.

9 They also -- you know, we were very
10 concerned about some of the experiences like
11 Vancouver had had where, you know, it was like a
12 cut and cover approach to constructing the tunnels
13 and it resulted in their central business districts
14 being tied up for, you know -- basically impassable
15 for many years. And I think that was the first
16 time we heard of, no, we would look at bringing
17 road header technology to this. We would
18 have -- we would tunnel excavation -- or sorry,
19 access corridors or shafts that we would drop
20 equipment down and assemble and bore the tunnels.
21 That was the first I remember hearing about some of
22 those thoughts.

23 And then I remember distinctly one of
24 them saying, Look, you know, we construct hundreds
25 of kilometres of tunnels a year. We would not be

1 overly concerned about the risk that this tunnel
2 would present. Frankly, we would be more concerned
3 about the risk that -- things like Ontario labour
4 laws and the availability of labour and the rest.
5 They were more concerned about, you know, how many
6 hours of operation a day would they be able to
7 maintain, you know, within regulations and laws and
8 labour and the rest.

9 So my takeaways from that meeting, as I
10 recall, were not overly concerned. The more data
11 you can give us, the better. We would look at
12 different approaches to building this tunnel than
13 your engineers are currently contemplating.

14 KATE McGRANN: Was IO part of that
15 meeting or that series of meetings?

16 KENT KIRKPATRICK: No, that was very
17 early on.

18 KATE McGRANN: Were there any reports
19 or documents or records generated of those meetings
20 that could have been shared with IO or that might
21 otherwise be available?

22 KENT KIRKPATRICK: I doubt it. No, it
23 was an informal meeting. It was more of just to
24 allow us to hear some ideas from the tunnelling
25 industry about -- you know, we were concerned --

1 you know, the Big Dig in Boston had happened.
2 There were examples around the world of these major
3 underground infrastructure projects having gone way
4 off the rails, no pun intended, in terms of budget
5 and schedule and risks.

6 So we were just trying to get an
7 initial assessment of -- it was almost like a
8 learning opportunity than anything definitive.

9 KATE McGRANN: And you said that a
10 commitment was made to the Mayor and Council to
11 address the risk as effectively as it could be
12 addressed. What form did that commitment take or
13 how was that commitment made?

14 KENT KIRKPATRICK: Oh, there may be
15 something in the Council record. It was more just
16 in terms of, you know, the discussions that we
17 would have with Mayor and the Chair of the Transit
18 Committee and other members of Council about
19 what -- I had read this was the largest
20 infrastructure project in the City's history, and
21 you know, as always, with any large project, there
22 are always significant concerns about is this
23 something that the City can manage, that it can be
24 done, it can be accomplished.

25 And the concerns were, and as they

1 always are, schedule and budget, but this one had
2 the particular twist of the tunnel.

3 KATE McGRANN: Okay.

4 KENT KIRKPATRICK: Which was new. I
5 think if you recall -- well, you may -- sorry, that
6 is not appropriate.

7 You may have come across like the
8 original planning, and when I say "original", back
9 in the early 2000s, like that North-South Project
10 that in the end was cancelled, contemplated on the
11 surface alignment for the rail in the downtown of
12 Ottawa.

13 And one of the reasons I think it was
14 cancelled by the subsequent Council was -- and I
15 remember Larry O'Brien campaigning on, you know, no
16 G8 capital City has a light rail system that you
17 don't take -- or has a transit system that you
18 don't take an elevator to.

19 So you know, that is when the planning
20 started to shift to the volumes that we are talking
21 about and the impact on the downtown over time that
22 we had to contemplate -- I mean, it had been
23 contemplated in the past, but more thought had to
24 be given to whether this was above grade or below
25 grade, and below grade was just that is a lot more

1 risk. So we were very focussed on it, as were, you
2 know, all of the stakeholders, political
3 stakeholders of the City.

4 KATE McGRANN: To the extent that you
5 can, I am interested in understanding what the
6 involvement of the City Councillors was in this
7 project as compared to their involvement in the
8 North-South Line.

9 So for example, were there any changes
10 in approach to their involvement in decision-making
11 on Stage 1 of the LRT as compared to the
12 North-South Line?

13 KENT KIRKPATRICK: I mean, I can
14 remember the involvement that they had in
15 Confederation Line. To be honest, it is going
16 back -- that is 15, 16 years ago with the
17 North-South Light Rail Project.

18 I guess the one thing I remember is
19 that one of the problems we had with the
20 North-South Project is that when we brought that to
21 Council, there was -- I think there was a -- they
22 weren't familiar enough with, you know, the
23 process, so we learned that we needed to keep
24 Council much more informed about the design and the
25 procurement than we had with North-South.

1 And I don't mean that we were not
2 trying to keep them informed on the original
3 project, but I remember there were substantive
4 discussions about, Well, you know, why can't we see
5 the final design of this project? Well, because it
6 doesn't exist at this point, you know.

7 So the whole -- I mean, the City,
8 municipalities in Canada and Ottawa is the same,
9 are very familiar with the traditional
10 design/bid/build approach to major infrastructure,
11 and the notion of design/build was something new,
12 the notion that, you know, the City wouldn't first
13 design something and then approve the detailed
14 design of it and then go out for bids, that, you
15 know, there would be a sequence or in parallel the
16 design would be done while the procurement
17 construction process was underway.

18 Then of course the next step from
19 design/build to design/build/finance/maintain and
20 operate was another huge conceptual paradigm shift
21 for everyone, not just for Council, but for, you
22 know, staff and the private sector, you know,
23 the -- not just the consortiums but the consultants
24 that we would hire and inform us and the rest.

25 So we knew from the outset that we

1 needed to be -- you know, that the operating
2 principle needed to be to provide as much
3 information about the process and the alternatives
4 to the process to Council early in the process, so
5 that would be one difference.

6 KATE McGRANN: And any other
7 differences that spring to mind right now?

8 KENT KIRKPATRICK: No.

9 KATE McGRANN: And so then could you
10 explain at a high level how the City went about
11 providing more information to Council with respect
12 to the procurement aspects of Stage 1 as compared
13 to during the North-South Line work?

14 KENT KIRKPATRICK: Yeah, I can't
15 remember the years or the dates. So I remember
16 2011 being a very big -- the spring of 2011 being a
17 very big time for that.

18 But -- well, to answer your question,
19 more reports, more informative reports early in the
20 process. I think back in 2007 or '08 -- probably
21 2008, you know, after the approval of the master
22 transit -- or transportation plan, you know, we
23 started looking at, okay, what are the issues
24 around the delivery of some of these big pieces of
25 infrastructure.

1 I think there was some work we did with
2 KPMG or Deloitte, I think it was KPMG at the
3 outset, with respect to risks of some of these big
4 pieces of infrastructure, light rail being most
5 important, and you know, different approaches to
6 the procurement or construction and delivery of the
7 infrastructure at that time.

8 And then I think in 2009 or '10, there
9 was more work done on that that confirmed that this
10 should -- light rail should be a design/build at a
11 minimum, just in terms of schedule and -- schedule
12 benefits being the principal ones, but also, you
13 know, having one contractor that is responsible for
14 the design and the construction would eliminate --
15 you know, what typically would happen in large
16 projects like this is there would be change orders
17 and, you know, Well, that design is not correct,
18 and you know, that you would have -- you would be
19 trying to manage the relationship between the
20 designers and the constructors and the City and
21 that, you know, there was many benefits to a
22 design/build for a piece of infrastructure like
23 light rail.

24 And then in 2010 we started to -- I
25 think -- sorry, 2011, I think it was a two-step

1 process where we had -- where Council -- we
2 recommended and Council confirmed yes, design/build
3 at a minimum and then come back to us with
4 recommendations around the extent to which finance
5 should be part of it. And we did that.

6 Now, at that time I think it was
7 Deloitte that was advising us. Yeah, actually, I
8 think that is in the -- I took a look at the two
9 reports back from 2011, so that is in there.

10 And so I think that is the primary way
11 is just more frequent, much more informative
12 reports, you know, giving Council as much
13 information or more information perhaps than they
14 required to consider the recommendations that were
15 in front of them.

16 And there were very extensive
17 debates -- well, discussions I would say about
18 those, and I am sure that the minutes of the
19 meetings or recordings of the meetings would have
20 that in it.

21 KATE McGRANN: Mr. Wardle, would you
22 undertake to just identify what the two 2011
23 reports are to us, just so that when people are
24 reading the transcript, they will be able to
25 quickly understand what Mr. Kirkpatrick was

1 referring to?

2 PETER WARDLE: I think I can do that
3 now. I believe it is the May 2011 report from
4 Nancy Schepers to Council and the July 2011 report
5 from Ms. Schepers to Council, both of which we
6 provided to Mr. Kirkpatrick prior to his testimony
7 today.

8 THE WITNESS: Yes.

9 PETER WARDLE: And if you need the
10 document numbers, I am happy to provide that.

11 KATE McGRANN: Thanks very much.

12 A couple of questions about the budget
13 for this project. I understand that the project
14 first had a cost estimate of 1.8 billion and the
15 budget was ultimately set at 2.13 billion. Is that
16 consistent with what you recall?

17 KENT KIRKPATRICK: Yes.

18 KATE McGRANN: And --

19 KENT KIRKPATRICK: Yeah, I think the
20 2.3 was in construction dollars, so, anyway, those
21 numbers sound familiar, but I think that the final
22 one was in -- you know, adjusted for the years that
23 we were anticipating, you know, the three or four
24 years over the construction would exist, yeah.

25 KATE McGRANN: At any point along the

1 way, did anyone express to the City, either staff
2 or the City's advisors, any concern about the
3 adequacy of the budget for the project that the
4 City was planning?

5 KENT KIRKPATRICK: So I can't remember
6 who and when, but I can tell you, of course, that
7 was an ongoing discussion, a concern about -- as I
8 said before, you know, the two obvious and
9 consistent concerns over building a big piece of
10 infrastructure is, is it going to be completed on
11 time, the schedule, and on budget.

12 And part of what you need to do with
13 these P3 things is to have a sense of what is your
14 baseline budget for the construction of this, and
15 then you need -- you know, the whole calculation
16 of, you know, value for money that the P3 approach
17 would bring versus a traditional approach is, you
18 know, so if this is the budget that would be
19 involved in traditional design and procure,
20 construct, what benefits are going to come to the
21 City either through risk avoidance or schedule
22 acceleration or budget reduction by the
23 consortium's ability to, you know, value engineer
24 and build the right infrastructure for the
25 operating period and make the right decisions in

1 terms of balancing, you know, the construction --
2 the standards of construction to the standards of
3 maintenance and the costs that are involved in
4 constructing and the costs that are involved in
5 maintaining.

6 So just as a concept, that is always
7 part of the discussion.

8 With respect to is the budget going to
9 be achievable or not, I remember there was one
10 discussion I think -- well, at least with the
11 Mayor's office, probably Councillors as well, I
12 can't remember exactly when, but just with respect
13 to -- so the original budget was struck in, you
14 know, whatever the dollars were being assumed at
15 that time, and then when we had to develop the
16 baseline budget that we would use to, you know,
17 measure value for money and other things, like we
18 had to decide what budget are we going to go to
19 Council with to say, approve this budget and this
20 schedule and this procurement methodology.

21 There was concern over the extent to
22 which, you know, the time frame that had changed
23 the inflation pressures on those original estimates
24 that people still had in their heads back from --
25 you know, the timing of the Transportation Master

1 Plan back in 2007 and 2008, and now it is 2011,
2 looking at different construction, led into how do
3 we accelerate the construction of this.

4 You are probably familiar there was a
5 big discussion about the alignment of the tunnel
6 and how could we -- you know, how could we come up
7 with a better idea for the alignment of the tunnel
8 that would result in less cost, faster build and,
9 frankly, a better ridership experience too. Like
10 how can we not have to tunnel this tunnel so deep
11 that people are taking three storeys of escalators
12 down to get to the platforms, that it is going to
13 take so much time to build, that it is going to
14 cost so much money.

15 And there was a lot of effort put into
16 that initially, and that helped bring, you know,
17 the conceptual budget back closer to -- well, that
18 2.3 that you were talking about, which was closer
19 to the original 1.9 than that budget would have
20 been without the tunnel realignment.

21 KATE McGRANN: And other than the
22 change to the alignment of the tunnel, anything
23 else that the City did to get comfortable with the
24 adequacy of the budget for the project?

25 KENT KIRKPATRICK: Not that I recall.

1 I am sure there were things, but that was one big
2 one I remember. At my level, you know, that was
3 the discussion.

4 I think the recommendation of it being
5 a design/build/finance/maintain was a piece of it
6 in terms of strategy, in terms of trying to get the
7 best schedule and cost and risk avoidance.

8 Sorry, I am just trying to remember
9 things here. I think there was a decision at one
10 time I think to extend. We had originally been
11 talking I think about a 15-year operating
12 concession as part of the contract. I think that
13 was extended, and part of the rationale, if my
14 memory serves, was, first of all, better -- you
15 know, we had better assurance that the thing is
16 being built the right way in terms of longevity
17 initially if the same consortium is responsible for
18 maintaining it for 30 years versus 15.

19 There is also the opportunity for the
20 consortium -- you know, they look at the return of
21 investment or the profit of the project, not just
22 on the construction but the whole thing, and by
23 providing a longer concession period -- or
24 operating period, sorry, at the end that allows
25 them to -- more flexibility in terms of where do

1 they earn the profit, you know, over -- you know,
2 they have a longer contract, longer opportunity,
3 better opportunity to earn profit over that period
4 of time.

5 So in terms of the overall mix, perhaps
6 better affordability for the City.

7 KATE McGRANN: Okay.

8 KENT KIRKPATRICK: There was one other
9 thing that just popped in -- your question was
10 again what other choices did we make in terms of
11 affordability?

12 KATE McGRANN: Or how else did the City
13 become comfortable with the budget that was set.

14 KENT KIRKPATRICK: Oh, yes, now I
15 remember it.

16 The thought that flashed through my
17 mind, quite frankly, is you are never comfortable
18 because you never know until you open those bids
19 whether you have reached the right balance of, you
20 know, the risk that the City keeps and the risk
21 that the City pushes across the table as part of
22 the agreement structure to the consortium and how
23 they are going to price that risk. You don't
24 really know until the end.

25 So it is just the thought I had when

1 you said how did the City become comfortable, I
2 don't know if we -- personally, I don't know if I
3 was ever comfortable until the day we opened the
4 bids and we had submissions that were going to
5 be -- that we were going to be able to proceed
6 with.

7 Yeah, if I recall something else, I'll
8 bring it up again.

9 KATE McGRANN: Okay. Were there any
10 discussions had at the City, either internally with
11 staff or with advisors, about any concerns or any
12 risks that the approach taken to the affordability
13 cap in the RFP and the point system that you
14 described earlier would incentivize not just the
15 best bid but a bid that was actually unrealistic
16 from a budget and price perspective?

17 KENT KIRKPATRICK: Not that I recall,
18 no. The concern was whether we were going to get
19 bids that met our affordability thresholds or, you
20 know, we were going to have to go back to the --
21 not all the way back to the beginning but have to
22 step back and say, Okay, how much do we need to
23 increase the budget by or how much do we need --
24 how much risk do we need to retain on our side of
25 the table, or what concessions do we have to agree

1 to in terms of schedule.

2 I mean, it is a multifaceted thing,
3 right. It is not just budget. It is risk
4 assignment, schedule. They are the three big
5 elements. And as I said, until we opened up those
6 bids, I was -- the concern wasn't are we going to
7 get a bid that is the private sector is going to
8 lose, you know, hundreds of millions of dollars at
9 or they are not going to be able to construct it in
10 that window or are they going to subsequently come
11 back and argue, Whoa, we didn't accept that risk.

12 I mean, other than a general concern,
13 which always exists, I don't remember any
14 discussions about, you know, we are building
15 something here that they are going to fail at.

16 The concern was, no, they are the
17 experts at this. What we may get is a result that
18 says your budget isn't realistic or your schedule
19 isn't realistic or -- and as we have already talked
20 about, no, we won't take a hundred percent of that
21 geo-technical risk on the tunnel.

22 The concern wasn't that none of that
23 would happen, but in the end they weren't going to
24 perform because they had accepted too much risk,
25 that their price was too low, that the schedule was

1 too demanding, right.

2 KATE McGRANN: In terms of the
3 selection of the delivery model, and in particular
4 the inclusion of the finance and maintain
5 components, starting with the finance component,
6 can you speak to what you recall being the main
7 drivers for the City's decision to include the
8 finance component in the delivery model?

9 KENT KIRKPATRICK: Yeah, well, and a
10 lot had changed over the last -- over the
11 intervening years between when we did North-South
12 and when we were pursuing this.

13 The senior governments, you know,
14 the -- I forget the year it came out, but the
15 Provincial Liberals had a document, and I forgot
16 what it was called, you know, the Red Book or
17 something, but it was basically about this is how
18 government should procure infrastructure.

19 The Federal Government had just created
20 a Crown corp. called P3 Canada and they were
21 very -- you know, their model also was AFP, which
22 is not just alternative design construction, but
23 alternative finance and procurement. So you know,
24 the idea that you should put risk where it best
25 sits in a relationship like between the public

1 sector and the private sector. So it is that --
2 you know, it is a public/private partnership in the
3 sense that risk is being shared or it is being
4 clearly identified and it is being assigned to one
5 party or the other and it should go where it is
6 best able to be managed and consequently priced.

7 And you know -- but that there is an
8 enhanced performance obligation on the consortium
9 because they are responsible for making the right
10 decisions about designing it and designing how to
11 build it with an idea to we also have the
12 obligation to maintain it.

13 And how do you ensure that the private
14 sector is going to perform the obligations that it
15 contracts to under that and how do you make sure
16 that they are making the right decisions. Well,
17 they include financing in it which puts them
18 at -- gives them a serious financial incentive or
19 disincentive, depending on how they behave, and
20 that that needs to be a mix of, you know, outside
21 financing and perhaps some of their own equity so
22 that there is more due diligence and perhaps, you
23 know, pressure being brought on them in making the
24 right decisions and performing -- making the right
25 decisions on how to operate after constructing

1 them.

2 So anyway, you are probably very
3 familiar with the theory behind AFP, but it
4 had -- it was becoming or had become the main
5 concept both at the Province and at the Federal
6 Government, and as you are aware funded a third of
7 this each, and I remember -- like my recollection
8 is that in fact, the Federal Government, for you to
9 have them as a funding partner, you had to show
10 that you had done a value for money assessment,
11 whether you should use an AFP approach to the
12 delivery of the project or not. And like you need
13 to be able to substantiate why you wouldn't do it
14 this way.

15 That is my recollection. I don't
16 remember any documentation to that effect or not,
17 but I am sure it exists if my recollection is
18 correct.

19 I mean, on the provincial side, that is
20 all caught up in the recommendation to Council that
21 we should use Infrastructure Ontario as a centre of
22 expertise and a key part of our procurement team.
23 And of course, Infrastructure Ontario, that is all
24 they do is AFP infrastructure, you know, whether it
25 is vertical infrastructure like hospitals or

1 horizontal infrastructure like, you know, express
2 highways. This was going to be their first piece
3 of horizontal infrastructure in terms of rail, so
4 their whole methodology -- so when we considered
5 the benefits of bringing financing into the
6 equation, that is -- I mean, frankly, maintenance
7 was -- that is almost a -- I guess in my opinion,
8 it is not really an option. If you are going to do
9 design/build, it is just -- it makes so much sense
10 to include maintenance, because as I have said a
11 few times now, it is the decisions about what do we
12 build initially and how much -- what activity and
13 how much funding is involved or needs to be
14 involved in maintaining what we build. Like do you
15 overbuild it, you know, with less maintenance
16 required in the future? Do you, you know -- do you
17 right-size it and spend more maintenance in the
18 future?

19 It just makes sense to have the people
20 that are making the decisions about what is to be
21 built and how it is to be maintained and that the
22 contract itself is very focussed on performance
23 deliverables, you know, the trains will run and
24 have this capacity, they'll run this -- you know,
25 in these time slots and they will be available

1 this -- so it is here are the performance metrics
2 of the contract. You make the decisions, you know,
3 with our overview, but you make the right balancing
4 decisions between how it is built and how it is
5 maintained.

6 But the financing piece was really I
7 guess the less -- the more nuanced or more -- the
8 newer piece of that puzzle, and that is why I felt
9 Infrastructure Ontario -- I can tell you my
10 recollection is that it wasn't a universally
11 popular idea with my team or Nancy's team at the
12 time to bring IO into it. We had constructed a
13 very capable team. We had some of the best
14 consultants working for us on the team in terms of
15 P3s and AFPs.

16 But I felt it was important and it came
17 up -- you know, the Minister of Infrastructure at
18 the time, who I had worked for, who hired me as
19 City Manager when he was the Mayor of the City, you
20 know, when he called me to tell me that he was
21 going to ensure that the Province would step up to
22 the higher share that the new budget was going to
23 require and he was -- you know, I can't remember
24 the exact words that Bob used. I don't think he
25 would have said it is conditional on, because

1 frankly it can't -- I mean, Council makes the
2 decision about how they are going to build this
3 thing. But he would have made it I think very
4 clear -- I think the words he used was, you know,
5 something along the lines of, I want you to
6 seriously consider having Infrastructure Ontario
7 deliver this project or be involved in the delivery
8 of this project.

9 And that made perfect sense to me,
10 because we were considering financing as part of it
11 and they were and are the centre of expertise in
12 Ontario for that kind of a contract, and frankly,
13 my experience with the previous project, the
14 North-South Project, was -- you know, we got to a
15 point where in negotiations with let's say, you
16 know, the final two, I felt we were being pushed
17 around a bit at the negotiating table, and in my
18 mind, the involvement of IO would bring the experts
19 to the table, the centre of expertise to the table,
20 but it also would bring to the table the
21 organization that all of these consortiums knew was
22 going to be responsible for the procurement of most
23 of the large infrastructure in the Province of
24 Ontario for the next who knows how long, the next
25 decade. They would think long and hard about, you

1 know, any sharp business practices with the
2 procurement agency that they were going to be
3 dealing with for every other project that might be
4 tendered in Ontario for the next ten years.

5 So I thought that there would be some
6 significant benefit to that as well.

7 So you know, we were thinking about it
8 and the work with Deloitte. It was a clear signal
9 from the Federal Government, this is how
10 governments in Canada should procure this kind of
11 infrastructure with the creation of P3 Canada and
12 the requirement for us to do a value for money
13 assessment of the procurement approach, and the
14 Province of Ontario, you know, our two funding
15 partners.

16 My recollection -- I don't think it was
17 ever -- I think I remember there was something -- I
18 think the Province, and this is at the bureaucratic
19 level, said, you know, the City can build this the
20 way it wants to, but if a value for money
21 assessment of alternate finance procurement shows
22 that you are leaving value for money on the table
23 by not -- you know, in terms of what you choose,
24 that is going to be an issue.

25 So, you know, strong signals everywhere

1 that this should be a design/build/maintain/finance
2 and then you'll see in those reports that Peter is
3 going to provide you with, we actually -- you know,
4 there was work done. We have got these experts
5 here to say, Okay, this is how much liquidity you
6 have to force into the system. You know, it is a
7 \$2.3 billion project. How much of it should be
8 financed for how long in the project. So how much
9 risk do you want the private sector consortium to
10 have in terms of when do they get their money. How
11 long do you hold it back for, and realizing that
12 they are going to charge you the financing costs
13 that they have for that money, so you are going to
14 pay that and it is going to be significantly more
15 than the City's financing costs because we can go
16 to the debt markets and borrow for a lot less than
17 they can.

18 So how much do you need to -- how much
19 "F", I remember these discussions, how much "F" is
20 in the DBFM, and is it long-term "F" or is it
21 short-term "F". How do you sculpt the payments to
22 the consortium in the Project Agreement so that you
23 are paying them when significant pieces have been
24 completed and not before, and you are holding back
25 enough that it is going to force their financiers

1 and the equity decision-makers to have enough
2 oversight and due diligence on the decisions that
3 their management is making in building -- designing
4 and building this thing.

5 And my recollection was IO initially
6 wanted to see about a third, like 700 million, an
7 "F" of 700 million, most of it I think short-term,
8 so a lot of it would be paid out over the four
9 years of the construction of it, but a chunk of it
10 would be held back and paid out over the -- what
11 was initially 15- and 30-year concession period.

12 Of course, the City's perspective was,
13 Well, look, we want the effect -- and this is a
14 good example of the discussions that went on
15 between the City and IO, right, because we were
16 like, Okay, we want to force the liquidity, but we
17 don't want to pay more than we have to to get it.
18 So is there a lower amount that would be as
19 effective in terms of forcing that liquidity into
20 the project. That was their term, "liquidity", but
21 basically it is, you know, putting enough risk for
22 them on the side that their money is at stake.

23 And in the end, I think that we
24 settled -- well, no, I saw it in the report I
25 looked at. It was 400 million that, you know,

1 between IO and Deloitte and the City we determined
2 that is a significant enough number. It will force
3 the behaviour that we want, and I forget what the
4 extra interest cost of that 400 million was going
5 to be.

6 But we did -- I remember we calculated
7 that and because we knew that that would be a
8 decision or a question by Council in the end. How
9 much more are we paying for this "F", right, and I
10 can't remember the number, but it was significant.

11 But it is in the reporting to Council
12 somewhere. You will see it.

13 And then I remember a discussion,
14 actually Deloitte was of the mind it should all
15 be -- the "F" should be 2.3 billion, but of course,
16 you know, when the Federal -- unless you can
17 convince the Federal Government -- well, first of
18 all, I am not sure I would ever recommend it being
19 that, the City's share to -- but if the Federal
20 Government isn't going to agree to pay the interest
21 costs on their one-third of 2.3 billion and the
22 Province isn't, it quickly becomes, you know,
23 excessively expensive to consider that.

24 And I think you could find out, but I
25 think that IO -- like the light rail projects that

1 they have done since Ottawa -- I mean, that was the
2 first Project Agreement for horizontal rail
3 infrastructure in Ontario, and so a lot of it was
4 being created for the first time. We used -- we
5 brought the Project Agreement that we had developed
6 for North-South Project to the table and IO brought
7 their standard Project Agreement constructs, but up
8 to that point in time it had primarily been for
9 hospitals and highways.

10 And a lot of work went into merging
11 those together and coming out with what we thought
12 was a good Project Agreement for the procurement of
13 this type of infrastructure. My sense is they are
14 still using it today, you know, I am sure with some
15 changes, but I bet they are still close to the same
16 percentage "F" that we identified through all that
17 work would be significant enough to force the
18 behaviour we wanted and, you know, not pay more
19 interest charges than we needed to.

20 If I am rambling here, I need you to
21 stop me. A lot of this is just coming from my
22 memory and it is probably a bit disjointed, I
23 apologize.

24 KATE McGRANN: No, please don't
25 apologize.

1 You mentioned that in your
2 conversations with Minister Chiarelli about IO
3 delivering the project and him strongly -- or
4 urging you to strongly consider that IO be
5 involved, you said those took place in the context
6 of conversations with him about whether the
7 Province would ensure payment of the higher share?
8 I am not sure that I am paraphrasing that quite
9 right, but it is --

10 KENT KIRKPATRICK: No, that is correct.
11 I don't -- like I couldn't tell you -- like I
12 remember where I was for the call, and it must have
13 been on the weekend because I was at home on my
14 deck.

15 My recollection -- I couldn't even tell
16 you what month it was, but it would have been I am
17 guessing sometime early 2011, maybe -- early 2011
18 probably. All I know is that my EA told me that
19 Minister Chiarelli, she had a call from I think
20 Andrew Telazuski, his EA, saying he wanted a call.
21 I had a very close working relationship with Bob.
22 As I said, he hired me as his City Manager, and I
23 worked closely with him. Well, I worked closely
24 with him for four years prior to that when he was
25 Chair to the Regional Municipality, so I knew Bob

1 quite well, and if Minister Chiarelli wanted a
2 phone call, he got one.

3 So he called, and I didn't know what
4 the purpose of the call was. I assumed it was
5 about light rail. But what the purpose of the call
6 ended up being was he saying he was confident that
7 the Province would agree to a third of the increase
8 in the budget, and that, you know, the other major
9 point of the discussion was he felt very strongly
10 that Infrastructure Ontario should be involved in
11 the delivery of the project.

12 You need to remember -- sorry, I
13 shouldn't say that. What is relevant to that is it
14 was Bob Chiarelli who built the first piece of
15 light rail in the City of Ottawa and that was the
16 O-Train. He campaigned for Regional Chair and got
17 elected on buses can't be the future of the transit
18 system -- can't be the whole transit system. The
19 transit way is great, but it initially was designed
20 and it exists, that corridor was designed with
21 turning radiuses and everything else that some day
22 rail can run on it. It is time that we start
23 experimenting with rail in Ottawa, and he
24 campaigned on building the O-Train instead of what
25 had been orginally contemplated as a more extensive

1 north-south bus transit way.

2 He campaigned on it and built it. And
3 then he campaigned on north-south light rail and
4 took it all the way through and had Council approve
5 it, and then after an election, which he lost and
6 Larry O'Brien campaigned on that wasn't the right
7 piece of infrastructure that -- you know, a tunnel
8 and the rest, he lost, and then the subsequent
9 Council cancelled the project.

10 I think that was probably some of what
11 was in his mind was Infrastructure Ontario, if they
12 are involved in this procurement phase, the project
13 has a much greater -- stands a much greater chance
14 of success, of being successfully procured and
15 built. He didn't tell me that, I don't think, but
16 I am sure that -- I remember that is what I would
17 have been thinking as to why, and they were. They
18 were the centre of expertise and had many successes
19 under their belt and it just -- I think it made
20 sense for him to recommend it and it certainly made
21 sense for me to recommend to Council.

22 KATE McGRANN: The increase in the
23 Province's contribution, what are you talking about
24 there?

25 KENT KIRKPATRICK: I couldn't tell you

1 exactly, but it would have been something in -- you
2 know, that increased from I think you said 1.9 to
3 2.3, so it would have been a third of that, \$400
4 million difference, something like that.

5 KATE McGRANN: Is it your recollection
6 that the Province did come through and actually
7 cover a third of that --

8 KENT KIRKPATRICK: Yes, they did.

9 KATE McGRANN: In terms of the starting
10 or the building blocks for the Project Agreement,
11 you mentioned that IO brought their template, the
12 City brought its Project Agreement from the
13 North-South Line. Were there any other precedent
14 Project Agreements that were looked to as that
15 Project Agreement was being put together?

16 KENT KIRKPATRICK: Not that I recall,
17 and I would be surprised if there were because, as
18 I said, it was pretty much the first. You know,
19 there had been some start-stops on some light rail
20 projects in Toronto at the time, but I think we
21 were groundbreaking.

22 KATE McGRANN: In terms of the -- I am
23 going to ask you some questions about specific
24 aspects of the Project Agreement, but before I get
25 there, you were delegated the authority to

1 negotiate the Project Agreement on behalf of the
2 City. It is my understanding that at least some of
3 those negotiations took place during the in-market
4 period. Were you involved in the negotiations of
5 the Project Agreement throughout that piece?

6 KENT KIRKPATRICK: You mean was I part
7 of the team that was sitting across from the table
8 with the consortium?

9 KATE McGRANN: Yes, for example.

10 KENT KIRKPATRICK: No.

11 KATE McGRANN: So could you just
12 describe --

13 KENT KIRKPATRICK: Not that I --

14 KATE McGRANN: Sorry, go ahead.

15 KENT KIRKPATRICK: Well, involved
16 potentially in the sense of -- and I don't recall
17 instances of it, but it could have happened where
18 the issues that were being discussed across the
19 table, Nancy would have come to me to say -- you
20 know, to talk about the issue, but I can't remember
21 any.

22 KATE McGRANN: So who led the Project
23 Agreement negotiations with the consortium?

24 KENT KIRKPATRICK: I expect who was at
25 the table was John Jensen who is the Director of

1 the City's team. From IO, it would have been
2 someone named -- I think his name was Rob Pattison.
3 Brian Guest would have been there too, but in terms
4 of who from a role perspective, it would have been
5 John Jensen and Rob Pattison.

6 KATE McGRANN: And what was the nature
7 of Mr. Guest's involvement in the procurement phase
8 in the negotiation of the Project Agreement?

9 KENT KIRKPATRICK: I can't remember
10 when I brought Brian -- so the nature of his role
11 was I brought him into the Project Team. I can't
12 remember exactly when that was, but I mean, that
13 would be easily -- you would be able to find that
14 out easily.

15 His role and why I brought him in
16 frankly is I had worked with Brian -- remember I
17 talked about how Brian -- or Mayor Chiarelli --
18 well, as the Regional -- in his campaign for
19 Regional Chair, he campaigned for the O-Train.
20 Again, that was wildly unpopular with the Regional
21 bureaucracy at the time because they had a very
22 successful transit-way, and that was what was
23 considered to be the City -- or the Region's future
24 in terms of rapid transit.

25 So they weren't really happy with the

1 idea of -- and I was Deputy Treasurer at the Region
2 at the time, so my involvement with this was very
3 peripheral, but I knew that was a big deal, you
4 know, that was going to be a big change in terms of
5 what had been considered to be the long range
6 planning.

7 So working -- Brian was the
8 representative from the Regional Chair's Office
9 that had the initial discussions I think with the
10 Region's management team on the O-Train. As I
11 said, it wasn't a popular concept but ended up
12 being vastly successful.

13 And you know, over time, the Region's
14 management team came around to it. I mean, they
15 were -- Chair and Council said that is what we want
16 to build, so okay, we are going to build it. But
17 Brian was very involved in the work with the
18 Regional Management Team on behalf of the Chair's
19 office to help in that success.

20 I worked with Brian for several years
21 as Deputy Treasurer at the Region, and for a short
22 period of time, after Bob was elected the first
23 Mayor of the City Council -- the amalgamated City
24 for a short period of time, as I was -- at the time
25 I was General Manager of Corporate Services when

1 Brian was working in the Mayor's office. Anyway, I
2 had lots of experience with Brian.

3 Brian is one of the -- he is an
4 extremely intelligent individual, and you know,
5 there is all kinds of intelligence. Brian is high
6 in a couple of them, but one of his strengths
7 is -- and I watched it with the construction of the
8 O-Train. Brian is -- he is very intelligent, but
9 he has got the ability to be constructively
10 critical. He is very creative and he sees big
11 picture things.

12 Anyway, he is an idea -- he is a
13 thought leader is sort of the way I put it. Long
14 story short, it is not that I didn't trust -- of
15 course I trusted the staff that I had hired to be
16 responsible for this thing, implicitly trusted
17 them, and I trusted -- you know, I trusted that we
18 had the best planning, transit planning and transit
19 engineering, you know, P3, financing consultants on
20 the team.

21 But I wanted someone that was going to
22 be in there, because I think it is a critical
23 function of a project like this, to be a
24 challenger, an idea challenger. So you know, when
25 Deloitte says the "F" has to be this big - and I am

1 not saying this is something Brian did, but just as
2 an example - I want someone to say, Well, why does
3 the "F" need to be that big? Don't you understand
4 we are going to pay 600 basis points more for that
5 financing than we could finance it ourselves?

6 Probably the best example is I think
7 Brian was instrumental in bringing the thought
8 leadership that came up with the realignment of the
9 tunnel. So up to that time, the country's best
10 transit planners and engineers were saying the
11 tunnel, from A to B, it needs to be built here, and
12 Oh, it is going to need to be this deep because it
13 is going under buildings, and frankly I don't
14 remember all the details.

15 But huge -- as I said earlier, huge
16 schedule impact, huge cost impact, huge risk impact
17 by needing it to be so deep.

18 And I think Brian, I am not saying he
19 was the only one responsible, but I know he brought
20 the constructive criticism thought challenge to,
21 Okay, let's think outside the box here. Why does
22 it have to go there. You know, could it not follow
23 one of the street -- anyway, someone else will tell
24 you, like Nancy or someone else will tell you all
25 the details of it, but it is just another example

1 of why I wanted someone -- I wanted a role like
2 that on the Project Team, and Brian was the best
3 individual that I could think of because I had seen
4 him do it before and so I asked him to join the
5 team.

6 KATE McGRANN: Do you remember any
7 particular aspects of the Project Agreement being
8 brought to you as something -- as a sticky point or
9 something for the City's consideration?

10 KENT KIRKPATRICK: Well, I have talked
11 about the one, right, that I had to call or have
12 the discussion with Antonio, the acting CEO of
13 Infrastructure Ontario. That was one.

14 The concept of an affordability cap was
15 one.

16 I think I was in -- I apologize, but it
17 is difficult for me to separate discussions I
18 remember about concepts like transportation matters
19 or energy matters or those things that I was part
20 of the discussion of and had an opinion on as part
21 of the Executive Steering Team discussion or was it
22 brought to me outside of the Executive Steering
23 Committee context.

24 I may have had some discussions with
25 Nancy about those outside of -- sorry, was that an

1 important distinction, outside of the Executive
2 Steering Committee or --

3 KATE McGRANN: No, you have raised it
4 and I am interested in hearing about it, yes.

5 KENT KIRKPATRICK: Yeah, the only one
6 that I am sure of was in my office and are we going
7 to insist on this or not, and yes, we are, and
8 consequently I had to talk to IO about it was the
9 risk -- the tunnel risk transfer.

10 The others more likely were discussions
11 that I had with Nancy prior to, you know, just in
12 terms of here is what is going to be on the agenda
13 the next Executive Steering Committee that we need
14 your involvement in.

15 By the way, just on that one, you might
16 be interested in this, I don't know, but
17 Infrastructure Ontario's model prior to this
18 project, and it may have been part of why -- I
19 don't -- I shouldn't -- yeah, okay, I am not going
20 to put words in Bob's mouth, but it may have been
21 one of the reasons he was interested in IO being
22 involved was their model up to that point in
23 time -- so if I was the Ministry of Health and we
24 are going to build a big new hospital in Toronto,
25 the Ministry of Health would -- you know, Cabinet

1 would say we are going to fund this. Here is the
2 money to build this hospital. And then by policy,
3 Infrastructure Ontario would be assigned the
4 responsibility to procure and construct this
5 hospital.

6 And the Ministry of Health would just
7 be a partner. It would be an important partner.
8 They would say, Yeah, right, this building needs to
9 do the following things. It needs to serve this
10 many people on an in-patient basis, you know,
11 whatever. The infrastructure needs to do the
12 following things.

13 And then -- but after that, the
14 Ministry of Health was not involved. Well, they
15 were involved, but they weren't making the final
16 decisions. Infrastructure Ontario were, right up
17 to the signing of the contract.

18 So when IO first came to see us after,
19 you know, it was -- we were going to hold a meeting
20 to talk about how they might assist, what their
21 role might be, what they arrived with was that
22 model, which was we are going to procure this
23 thing. And yeah, you know, your staff can be
24 involved and we'll take the material they have got
25 and the rest, but we are going to develop the

1 Project Agreement and we are going to take it to
2 market. We will execute the contract.

3 So Council just needs to make the
4 decision, build this. This is the budget. This is
5 the risk. And then we are -- we have it.

6 And I said that will never work. I
7 won't recommend that to Council. Council needs to
8 be able to maintain the final decision-making
9 authority of this, right up to the point after the
10 procurement process has been run.

11 And by the way, I will not give over
12 final decision-making. So if they are -- and if
13 you read and go and look at that agreement, you'll
14 see the decision-making framework and the
15 escalation that is built in to ensure that
16 decisions are made on a timely basis, but at the
17 end of it, it calls for if the teams can't agree.
18 Okay, now it is an issue for myself and the CEO of
19 Infrastructure Ontario to deal with. And in the
20 end, if we can't agree, I have the final
21 decision-making authority.

22 So as an example, that tunnel risk
23 assignment, in the end that was Antonio saying to
24 me, I am telling you my position is that that
25 should not be included. It could result in an

1 unsuccessful procurement process. And I said,
2 Well, we will find that out at the end, but I want
3 to test that the private sector will accept that
4 risk, and they did.

5 So I just thought you might be
6 interested in that, because that is a slightly
7 different -- not slightly. It is a significantly
8 different model than IO was created with. You
9 know, the Province of Ontario wanted a procurement
10 arm that was independent of and a centre of
11 expertise from the various ministries that
12 typically would procure these pieces of
13 infrastructure, which I think is a great concept,
14 but in the municipal world, with an elected Council
15 and a much more grass roots level political
16 decision-making, that would never work.

17 KATE McGRANN: I think I have asked you
18 this question in one form, but I am going to ask it
19 in another form just to make sure that I have
20 covered it off.

21 During the negotiation of the Project
22 Agreement, any particular issues -- so past the
23 drafting of the RFP now and into the negotiation of
24 the Project Agreement, any issues in which IO gave
25 advice that the City disagreed with or did not

1 follow?

2 KENT KIRKPATRICK: None that come to
3 mind immediately, and I am just taking a few
4 moments here to think about it.

5 So none that I am aware of. I am sure
6 there is a multitude -- well, I shouldn't say
7 multitude. I am sure there are some that would
8 have been issues of discussion or even debate
9 between John Jensen and Rob Pattison or Nancy and
10 her counterpart, but I can't remember any others
11 coming up to my level.

12 KATE McGRANN: Can you speak to IO's
13 role in the project once the Project Agreement has
14 been finalized and the project is moving into the
15 construction phase?

16 KENT KIRKPATRICK: Yeah, and it is
17 outlined in that -- that is the other document you
18 should ask Peter to provide you with, but that
19 October 2011 Memorandum of Understanding between
20 the City and IO, it outlines very clearly what the
21 roles of both parties are.

22 And there is a role -- there was and is
23 a role articulated in that for IO post procurement,
24 which is assisting the City with the oversight of
25 the contractual obligations of the consortium

1 during the performance period.

2 KATE McGRANN: And just at a high
3 level, what did that assistance look like in
4 practice?

5 KENT KIRKPATRICK: So I was less
6 involved at this point. My involvement was -- I
7 mean, my involvement at this point would have been
8 just Chairing the Executive Steering Committee
9 meetings.

10 But it would have been if there -- so
11 you know, the contract would call for there were
12 requirements in terms of the consortium bringing,
13 you know, certain decisions with respect to design,
14 if there were trade-offs, certain trade-offs that
15 they identified, Oh, we want to build this
16 differently. I remember one of them was that, we
17 dealt with the Executive Steering Committee,
18 was -- I think it was -- and this would have been
19 after the contract was signed, but there was this
20 quality of the steel. Like they had specified some
21 steel specification in the construction of the
22 trains, and they were proposing a change that would
23 be more cost-effective and still meet the
24 performance standards and that required the City's
25 approval.

1 IO would have assisted in, well, this
2 is what the contract says about that, and you know,
3 should the City accept that or should it accept it
4 with certain conditions or that kind of thing.

5 KATE McGRANN: But any change --

6 KENT KIRKPATRICK: Basically it was
7 like --

8 KATE McGRANN: Sorry.

9 KENT KIRKPATRICK: I apologize to
10 interrupt. It would have been in a sense that they
11 had the experience of being responsible during the
12 construction period for these other pieces of
13 infrastructure they had procured. They had, you
14 know, great familiarity, with A, the agreements,
15 and B, if I can, the process of those discussions
16 and negotiations with the private sector consortium
17 and, you know, living within the spirit of the
18 agreements as well as the black and white
19 expressions of the agreement.

20 KATE McGRANN: Were there any changes
21 to IO's relationship with the City over the course
22 of the project while you were there?

23 KENT KIRKPATRICK: In terms of what
24 that Memorandum of Understanding outlined? No.

25 I mean, like any relationship, you

1 know, there is sort of a storming, norming and
2 forming period at the outset and then the
3 relationship matures, and that happened through the
4 life of the -- you know, from the early days of the
5 project, but nothing outside of what was agreed to
6 in that Memorandum of Understanding.

7 KATE McGRANN: Once the project was in
8 the procurement phase, to your recollection, did IO
9 provide the City with any advice on its
10 relationship with RTG or more generally that the
11 City did not follow?

12 KENT KIRKPATRICK: No.

13 KATE McGRANN: Okay. Could you speak
14 about your role in the regulation and safety
15 oversight of the system for a few minutes.

16 As City Manager, you were delegated the
17 accountable executive, although I believe that that
18 term was later changed. First of all, have I got
19 that right?

20 KENT KIRKPATRICK: I can't remember, to
21 be honest.

22 KATE McGRANN: Did you --

23 KENT KIRKPATRICK: About the title.

24 KATE McGRANN: Fair enough.

25 KENT KIRKPATRICK: Yeah.

1 KATE McGRANN: All right.

2 KENT KIRKPATRICK: My recollection of
3 the whole issue is it involved -- well, the core of
4 that issue was, you know, what the requirements of
5 Transport Canada's regulations were around -- like
6 the Federal Government and Transport Canada
7 have -- we had decided to be the railway operator,
8 if I remember correctly.

9 Basically it was just we needed to do a
10 lot of work with the Federal Government to get the
11 regulation to be amended so that it would fit with
12 what we were proposing to do in Ottawa.

13 KATE McGRANN: I guess my question for
14 you is what steps did the City take to plan for the
15 oversight, the safety oversight it was required to
16 conduct to the system, and then how were those
17 plans implemented?

18 KENT KIRKPATRICK: I don't remember
19 very much about that. That was something I --
20 well, Nancy Schepers, and I am not sure if you have
21 spoken with Nancy yet or not, she was highly
22 involved in that is my recollection. She worked at
23 Transport Canada for a period of time and was very
24 familiar with the people there and the regulations
25 that were involved.

1 KATE McGRANN: Okay, and what did you
2 understand your role in the structure that was
3 implemented to be?

4 KENT KIRKPATRICK: My understanding of
5 it was that basically the buck stopped with -- like
6 I had -- some position needed to be identified as
7 the operator in accordance with the regulations,
8 and you know, like the buck would stop with that
9 position and that position would be the City
10 Manager.

11 KATE McGRANN: Okay, and then can you
12 speak at all to the various steps or stages that
13 were in place at the City before the buck got to
14 you?

15 KENT KIRKPATRICK: No. And yeah, I am
16 completely drawing a blank on that one past what I
17 have just described to you. If I went back and
18 read some of the reports, I would probably remember
19 more, but I think that was something that was being
20 developed with the Federal Government later on in
21 the process.

22 No, I'm sorry, I can't help more there.

23 KATE McGRANN: Could you speak to the
24 extent of the Mayor's involvement during the
25 procurement phase for this project?

1 KENT KIRKPATRICK: Yeah, I have -- I
2 don't know, it changed, again, depending on what
3 the issues -- like I would have very frequent
4 meetings with the Mayor about, you know, issues of
5 the day or the moment or crisis issues.

6 In terms of standing meetings with the
7 Mayor, I would have -- they were less regularly
8 scheduled, but -- and with the Mayor himself,
9 probably not a lot of direct discussions, more with
10 his Chief of Staff just in terms of, you know,
11 updates on where the project was at and how it was
12 going.

13 Your question was what involvement did
14 the Mayor have?

15 I remember a presentation to the Mayor
16 in his office about where we were at. I think it
17 would have been in that -- probably that early 2011
18 time frame about when we were developing -- you
19 know, we were in the process of bringing together,
20 okay, all of the work we have done. How does
21 this -- how do we -- where do we land in terms of
22 what we are going to recommend to Council with all
23 of this work, and we would have had a meeting where
24 we presented those conclusions and the
25 recommendations to the Mayor to give him a sense of

1 where we were going with it prior to finalizing the
2 report for Council. But I don't remember the
3 timeline.

4 KATE McGRANN: And were you seeking the
5 Mayor's feedback on staff's findings and
6 conclusions as part of that meeting?

7 KENT KIRKPATRICK: Yes.

8 KATE McGRANN: Do you remember what
9 feedback you received?

10 KENT KIRKPATRICK: Again, this is --
11 you know, it is almost impressions. I remember
12 there was one -- I remember one issue was the
13 Mayor -- and this may have been an earlier meeting
14 where we had said, Okay, this -- you know, in terms
15 of the project that was priced at 1.9 billion at
16 one time in time, this is where we now think we are
17 at with it, and it was higher than the 2.3. I
18 can't remember the numbers.

19 And I think it was he was clear that he
20 wanted strategies to be developed that would bring
21 that closer -- back closer to what, you know, the
22 estimate as part of the Transportation Master Plan
23 had been.

24 So that is where -- you know, the
25 tunnel alignment would have been a piece of that,

1 as an example of another thing.

2 So I do remember one meeting where he
3 expressed concern over the re-stated number
4 adjusted for inflation and other things.

5 A concern about the schedule, and
6 again, I can't remember if that was in -- well, he
7 was very -- like we had initially had a schedule
8 that this thing was going to be completed long
9 before the Sesquicentennial in Ottawa, and he was
10 concerned about a schedule that was beyond that, as
11 was the Transit Committee Chair, and frankly as was
12 the entire Executive Committee and Council.
13 Actually, that may have been -- no, it was
14 Executive Committee I think.

15 Anyway, you'll see there is a report
16 where we were at Committee and it was like, You
17 need to go back and figure out how you are going to
18 accelerate this project. So he would have been
19 involved in some of those discussions.

20 KATE McGRANN: What was the basis for
21 the concern about the original schedule that led to
22 the direction to accelerate?

23 KENT KIRKPATRICK: It was too long.

24 KATE McGRANN: Too long as measured
25 against what or for what reason?

1 KENT KIRKPATRICK: There were -- well,
2 just, again, as I mentioned earlier, at that -- you
3 know, things were changing in terms of what we were
4 expecting in terms of impacts from this.

5 So are they going to build this with
6 road -- like is the best proposal going to be we
7 are going to build this with roadheaders and nobody
8 will even know what is going on underneath the
9 streets of Ottawa? Or is the best proposal going
10 to be cut and cover and we are going to decimate
11 the CBD of Ottawa for a couple of years?

12 So you know, just how long this was
13 going to take was a concern in terms of the impact
14 it was going to have on the livability of a very
15 important part of the City, as well as the
16 potential impact on, you know, the whole country is
17 going to be coming to Ottawa to celebrate the
18 Sesquicentennial and the downtown of Ottawa is
19 going to be torn up, right through to, you know,
20 like the transit system is going to operate
21 completely differently as this thing is being
22 built. You know, routes are going to have to be
23 changed. There is everything else -- there was
24 just going to be a lot of repercussions to the life
25 of the City during the construction of this thing,

1 and they wanted the construction period to be
2 shorter. And so we went about trying to come up
3 with a strategy to achieve that.

4 And as I said earlier, you know, there
5 are trade-offs in this. It is how much money and
6 how much risk and how long, and you know, like we
7 came up with a Project Agreement that we thought
8 had a good shot of developing -- of delivering
9 something within what we had expressed as our
10 affordability limits, to be constructed in an
11 accelerated time frame and to leave the City with
12 risks that it was best able to manage and the
13 consortium could take the risks that it was best
14 able to manage.

15 But there were trade-offs in all of
16 those. Give someone more time, you know, they may
17 be able to build it in a less expensive fashion,
18 but then there is also inflation and other
19 pressures. You know, take more risk and someone is
20 going to price it differently too.

21 But I think those were the overall --
22 those are the main concerns about schedule. This
23 is going to be very -- you know, the concern was it
24 was going to be very disruptive both to the
25 operation -- the livability of the central business

1 district and very intrusive to potentially the
2 ability of the City to host the country to, you
3 know, the nation's party.

4 KATE McGRANN: You said that you
5 thought there was a good shot that the project
6 could be delivered within the budget and the
7 schedule set out in the Project Agreement. What
8 planning, if any, did the City do for the
9 eventuality that the schedule could not be met or
10 was not going to be met?

11 KENT KIRKPATRICK: Yeah, so I know that
12 there was contingency planning done. John Manconi
13 would be the best person to speak to about that.

14 But from a Project Agreement
15 perspective, and this is, again -- you know, I
16 talked about the three pieces, cost, risk and
17 schedule, you know, I remember a discussion about,
18 Okay, what do we build into this thing in terms of
19 liquidated damages.

20 So if we want to -- you know, if we
21 want to make sure that it definitely does not go
22 past the schedule date in terms of here are the
23 keys, how do you achieve that? Well, \$50,000 a day
24 or \$100,000 a day in liquidated damages saying, you
25 don't deliver it on that day, you are going to face

1 financial penalties.

2 And I remember that being a discussion
3 at the Executive Steering Committee, and it was --
4 you know, IO, I think their advice was very clear,
5 Look, these things are risky to build. You've got
6 to be careful because if you build too much in
7 terms of liquidated damages, you are going to end
8 up paying for it. Like they will price that risk
9 into the cost of the project.

10 So I can't actually even remember what
11 is there. I think there was a million dollar
12 penalty if they missed the completion date. Again,
13 that is a recollection.

14 So there was a small penalty, but it
15 wasn't significant, and that was based on the
16 consideration of how much we would end up paying as
17 a risk premium for that.

18 KATE McGRANN: And so if the revenue
19 service availability date is not met, the City
20 receives a payment of a million dollars. It still
21 doesn't have the system that it set out to achieve.

22 KENT KIRKPATRICK: Right.

23 KATE McGRANN: So anything from a more
24 practical perspective in terms of serving the
25 ridership or otherwise that was put together that

1 you can speak to?

2 KENT KIRKPATRICK: I know those plans
3 were put in place from a transit operations
4 perspective, but I don't know the details of them.
5 John Manconi would be the best to speak to about
6 that.

7 And I just want to -- I think I said
8 it, but just the million dollars is my
9 recollection. You should go back and look at --
10 well, I am sure you have, but that is what I
11 recall. There was -- it was not a token, but you
12 know, it wasn't a provision that was going to --
13 like if -- they are going to say, Fine, we'll
14 accept that risk, but you know, we are building a
15 \$30 million risk premium into the price of the
16 project for it.

17 KATE McGRANN: After the signing of the
18 Project Agreement, were you involved in any ongoing
19 discussions about containing the City's costs for
20 its portion of the work to be done, its role as
21 operator, its work through the construction period?

22 KENT KIRKPATRICK: Not that I recall.
23 After the signing, not that I recall.

24 KATE McGRANN: In terms of the vehicle
25 requirements that were created for this project, is

1 it your recollection that the City was seeking a
2 service-proven vehicle?

3 KENT KIRKPATRICK: Yeah, no, that
4 was -- so that was a topic of discussion for sure,
5 the vehicle. If by "service-proven" you mean there
6 was a -- the exact same vehicle that they were
7 going to deliver in Ottawa was operating in six
8 other cities, then I don't think so.

9 I know that -- my recollection is that
10 the vehicle -- I mean, there is several
11 configurations to the base vehicle. The vehicle
12 itself was in operations in many transit properties
13 around the world, but some of the -- I don't know,
14 maybe reconfigurations is going too far. Some of
15 the modifications to the vehicle that they were
16 proposing to make weren't in operation in a lot of
17 other properties in the world or not -- and I think
18 in particular, my recollection is some of those
19 were around the cold weather performance of the
20 vehicle.

21 KATE McGRANN: Were you involved in any
22 discussions about the requirements that the system
23 would have to meet before it could be put into
24 revenue service, the trial running requirements?

25 KENT KIRKPATRICK: I was aware of them

1 for sure, and I am sure that they were discussed at
2 the Executive Steering Committee. They were
3 probably also -- I felt it was important -- if you
4 go back to one of the reports, I think there was a
5 summary of some of the significant contractual
6 provisions there.

7 Anyway, the idea, I think my
8 recollection is it needed to run for, you know, an
9 error-free basis for something like 14 subsequent
10 days or something like that, and of course, there
11 would be the requirement for an independent
12 confirmation and all of that kind of thing,
13 which -- so and a lot of that would have been
14 developed in consultation with IO.

15 But again, this was their first light
16 rail Project Agreement, so I am guessing they would
17 have looked at templates for other AFP-procured
18 light rail around the world for what was necessary
19 there.

20 I wasn't -- I guess you can tell I was
21 not involved in detail in those discussions. I am
22 just aware that there was, as frankly there is in
23 any significant infrastructure procurement, there
24 is a point in time where, you know, something
25 formally and contractually is happening in terms of

1 acceptance of the infrastructure from the
2 procurer -- by the procurer from the constructor.

3 KATE McGRANN: So you mentioned that IO
4 would have been involved in those discussions.
5 Anybody else in particular working for or on behalf
6 of the City that you knew to be involved in
7 creating those requirements?

8 KENT KIRKPATRICK: No, I wasn't
9 involved in those discussions. I was aware of what
10 the contract provided for.

11 KATE McGRANN: And anybody in
12 particular providing you or the Executive Steering
13 Committee with advice as to the sufficiency of
14 those requirements?

15 KENT KIRKPATRICK: No.

16 KATE McGRANN: In terms of the interim
17 payments to be made during the construction phase
18 of the project, milestone payments were used for
19 this project. Can you speak to me about how it was
20 decided that milestone payments would be used?

21 KENT KIRKPATRICK: Yeah, I think as I
22 mentioned earlier, that was part of the discussion
23 of, Okay, how big is the "F". And it is not just
24 the size of the "F". Is it short-term or long-term
25 "F", and that gets to the shaping, the smoothing or

1 shaping of that payment curve. And that was also a
2 significant discussion I think with the funding
3 partners as well because, you know, from their cash
4 flow management, they had to have an understanding
5 of when would they be -- when were they going to be
6 required to contribute their share.

7 And so that would have been a
8 discussion that Deloitte and IO would have
9 provided, you know, their expertise and
10 recommendations to that.

11 I think I am correct in there was
12 also -- there were certain topics like that, I
13 think - I think I am right on this - where our team
14 polled the prospective bidders and had their input
15 on, you know, what they would like to see from a
16 Project Agreement perspective. And I think the
17 shaping of the payment curve was one of those. You
18 would have to check.

19 KATE McGRANN: Do you recall if there
20 was any consideration of using an alternate
21 approach to the interim payments such as progress
22 payments to pay for a percentage of the work done?

23 KENT KIRKPATRICK: Not outside of what
24 I just described, which is, okay, with respect to
25 what the Project Agreement is going to identify as

1 the shaping of the payments, you know, they want
2 their money as soon as they can get it. We want to
3 pay it to them in a fashion that is going to
4 reflect the completion of significant milestones in
5 what is on the ground and that is going to force
6 the liquidity into the agreement that the "F" is
7 supposed to do.

8 So I don't remember any specific
9 discussions outside of that whole general debate --
10 again, not a debate, but deliberation.

11 KATE McGRANN: In terms of the question
12 I had asked you earlier about the Mayor's
13 involvement in the project throughout the
14 procurement phase, you mentioned one meeting that
15 you recalled in which you were presenting a report
16 before it had been finalized to seek his feedback.
17 Is that something that happened more than once with
18 this project?

19 KENT KIRKPATRICK: I recall that one
20 discussion. I don't recall others. There may have
21 been. It wasn't -- there wasn't a draft report.
22 It was a -- it would have been a PowerPoint deck
23 of, you know, here are the key things that we
24 believe should be in the recommendations in the
25 report to Council.

1 KATE McGRANN: And then broadening the
2 question a little bit, you mentioned that I think
3 you had more interactions with the Mayor's Chief of
4 Staff. What kind of involvement did the Mayor's
5 Chief of Staff have in the progress of the project
6 during the procurement phase?

7 KENT KIRKPATRICK: Nothing outside of
8 the relationship -- you know, the involvement that
9 he had for most of the significant issues, that the
10 bureaucracy was -- the staff were dealing with.

11 You know, we had regular conversations,
12 again, on an ongoing basis day-to-day, with respect
13 to crises or issues of the day, and then outside of
14 that, you know, I would update him on where I felt
15 the progress was in terms of significant issues
16 like light rail, like Lansdowne, like the
17 Convention Centre, like, you know, big projects in
18 particular, and small projects that had, you know,
19 for one reason or another significant political
20 interest, like, you know, the Airport Parkway
21 Bridge, things like that.

22 But they are more in the line of
23 updates, yeah, just where we are at, things are
24 progressing, things aren't, you know.

25 KATE McGRANN: Did staff receive any

1 directions with respect to the Stage 1 of the LRT
2 project from the Mayor's Office?

3 KENT KIRKPATRICK: I don't recall any
4 outside of the one that I talked about which was
5 with respect to the increase in the budget that we
6 were contemplating with respect primarily to, you
7 know, passage of time and indexing that go back and
8 think about strategies to bring that closer to, you
9 know, the last conceptual estimate that the
10 previous Council had had.

11 KATE McGRANN: And was that direction
12 ever shared with Council or with FEDCO?

13 KENT KIRKPATRICK: Not that I recall,
14 no.

15 KATE McGRANN: Can you speak to the
16 frequency and nature of the reporting that Council
17 required during the construction phase of the
18 project while you were there?

19 KENT KIRKPATRICK: Sorry, just on that
20 last question, I don't recall, but you, if you
21 haven't already, should look at all the reports
22 that went to Council, because the issue of schedule
23 and affordability, like the budget and everything
24 was in that report.

25 So there may have been -- well, I know

1 there was information provided to Council under
2 those topics in those reports, and that would be
3 your best sense of what information did Council
4 have with respect to risk, budget and schedule.

5 Sorry, what was that last question?

6 KATE McGRANN: Can you speak to the
7 nature of reporting that Council required during
8 the construction phase, and I guess more
9 specifically, do you recall any concerns being
10 expressed by Council that they weren't receiving
11 sufficient information or information frequently
12 enough?

13 KENT KIRKPATRICK: No, and we had --
14 again, that is sort of in the vein of what I was
15 talking about earlier in terms of ensuring that
16 Council was provided with full and timely
17 information. I forget the periodicity, but it was,
18 I think, at least quarterly there was a fulsome
19 report on the status of the project that went to
20 Executive Committee and large slide decks, lots of
21 information, and you would be able to see those
22 there.

23 And, no, I never once -- as a result of
24 that I think Council felt they were very well
25 informed, and I never heard a concern about being

1 in the dark on it.

2 KATE McGRANN: And I asked you before
3 about the involvement of the Mayor's Office in the
4 project during the procurement phase. What was the
5 involvement of the Mayor's Office in the project
6 like during the construction phase while you were
7 there?

8 KENT KIRKPATRICK: I don't recall
9 anything different. The same -- you know, the
10 Mayor's Office received the same reports. There
11 would be issues like, for instance -- you know,
12 there were the two geo-technical problems that did
13 result -- did happen in the project. So the
14 sinkhole at University of Ottawa, of course, there
15 is an example of a crisis of the day. I would have
16 met with the Chief of Staff to the Mayor to say,
17 Okay, this is what we understand has happened. You
18 know, as we get more information, I'll tell you
19 more.

20 So that would be an example of the type
21 of issue that there would be regular face-to-face
22 or personal discussion about.

23 I can't recall, but I would be
24 surprised if I actually didn't meet with the Mayor
25 to talk about that issue. Certainly that would be

1 the kind of -- like that would be the kind of --
2 that is a very high profile, very concerning event,
3 and he would want the opportunity to ask, you know,
4 questions that he had in his mind about that event.

5 But outside of specific events like
6 that, it would be the regular updates that
7 Committee and Council were getting.

8 KATE McGRANN: And do you recall the
9 Mayor's office providing any direction during the
10 construction phase of the project?

11 KENT KIRKPATRICK: No.

12 KATE McGRANN: Can you speak to --
13 well, first of all, could you describe what
14 interactions, if any, you had directly with
15 representatives of the consortium during the
16 construction phase?

17 KENT KIRKPATRICK: We had -- so we had
18 meetings, and I forget what we called them, but
19 they were basically -- so, you know, the Project
20 Team, so Nancy and John, they had more regular
21 meetings, formal meetings. Of course, we were
22 meeting every day on issues, but there was -- we
23 agreed to a process of I think we called them
24 Executive Sponsor meetings, something like that,
25 where myself and Nancy would meet with, you know,

1 the heads of the -- you know, the chief EllisDon
2 representative, the chief SNC representative and
3 the chief ACS representative.

4 But those, they were intended to be
5 more -- like there wasn't a formal agenda and
6 minutes. It was more just like a temperature, you
7 know, are we -- you know, any issues that at our
8 level we want to discuss and just to ensure that at
9 the highest level of the organizations, there was I
10 guess a common understanding of where the project
11 was at.

12 An example I recall maybe in one of
13 those -- not maybe. An example I recall in one of
14 those meetings is we were concerned about where
15 they were at with the delivery of the train sets
16 that were being -- most of them were being put
17 together down in I think it was Rochester,
18 somewhere in New York State, and we -- you know, so
19 my staff were telling me we are starting to have
20 concerns about how fast the train sets are
21 progressing and if they are -- because that was,
22 you know, are they going to become a critical path
23 issue or not in terms of the schedule.

24 So that is an example of one of the
25 issues that I would have raised at that Executive

1 Sponsor meeting level.

2 KATE McGRANN: And can you speak to
3 what the relationship with RTG was like during the
4 construction phase while you were there?

5 KENT KIRKPATRICK: Yeah, and I
6 would -- while I was -- there is an important
7 distinction, I think, because you know, that was
8 early on in the construction.

9 I would say positive -- you know, they
10 weren't negative, but I would come away from those
11 meetings frankly sometimes worried about the
12 dynamics between the consortium members, and I am
13 just trying to remember instances why.

14 Well, I remember one of those meetings
15 I had been told by my staff -- so one of the
16 concerns that you have as the client in an AFP
17 agreement is, is the design -- like part of the
18 efficiency and the effectiveness of this construct,
19 the design/build construct is that design is
20 happening on a just-in-time basis because then it
21 has, you know, the best information for the best
22 design and it is happening not too far in advance
23 of the actual construction. There is all kinds of
24 synergies that come from that.

25 And we were getting concerned early on

1 that the design wasn't progressing fast enough to
2 be ahead of the construction, so that is an example
3 of an issue. So you know, my staff said, Look, at
4 the next sponsor's meeting, you know, we have been
5 pushing hard at this with our counterparts. We
6 think this is an issue you should raise as a
7 temperature check at the sponsor's meeting.

8 So I raised that, and I remember - you
9 know, SNC I think were doing most of the design
10 work - the representative from SNC coming back at
11 me very hard, Look, you just don't -- you know, you
12 government guys just don't understand how this
13 stuff works and you couldn't tell how far in
14 advance the design should happen or not. Like I
15 found him -- he came back very defensively and
16 critically, and I told him that, be that as it may,
17 it was a concern for the City. And I just got the
18 sense, looking at, you know, his partners at the
19 table, it was a concern for them too.

20 KATE McGRANN: Is that concern
21 something that was ever raised with IO?

22 KENT KIRKPATRICK: Oh, yeah. Well, IO
23 would have been -- the discussion about that issue
24 at the John Jensen -- Nancy Schepers and John
25 Jensen level, Rob Pattison would have been there.

1 Like, again, if you look at that
2 Memorandum of Understanding between the City and
3 IO, it is very clear that John Jensen and Rob
4 Pattison are joined at the hip. So there were no
5 procurement discussions and -- oh, I see, you are
6 asking about the construction period. Yeah, they
7 would have been aware of that as well. That would
8 have been a good example of, you know, their
9 oversight and input into how this was going during
10 the construction phase.

11 KATE McGRANN: I am just going to
12 quickly check my notes and while I do that, I'll
13 ask my colleague, Ms. Young, if she has any
14 follow-up questions.

15 EMILY YOUNG: Just one. I was hoping
16 that, Mr. Kirkpatrick, you could briefly take us
17 through the mechanics of decision-making on the
18 Executive Steering Committee. Was there voting?
19 Was it by consensus? Who had the final say, that
20 kind of thing.

21 KENT KIRKPATRICK: Right. Yes, I will.
22 Just one second, sorry, I was just -- okay, sorry,
23 I was just going to try to find it for you, I
24 thought might be helpful, but if you look at this
25 agreement, you'll find the articulation of IO's

1 role during the construction phase.

2 So not as many resources on-site,
3 because instead of, you know, directly developing,
4 it was more -- it shifted to more of an oversight
5 consultation role. But there was, you know,
6 regular -- they were still there, still present and
7 still involved in the discussions of key
8 performance -- contract performance issues with the
9 consortium like the one we were just talking about.

10 I apologize, I thought I might just be
11 able to grab it, but I can't find it.

12 So your question was, how did
13 decision-making at the Executive Steering Committee
14 work?

15 So I had an Executive Steering
16 Committee for the City at large as well, myself,
17 the Deputy City Managers, the City Solicitor, City
18 Treasurer, Chief Communications Officer. I also
19 had a senior management team meeting -- or forum.

20 I, when I was City Manager, I had the
21 same decision-making framework at all of those
22 levels, which is I wanted those forums to be
23 participative, consultative, and to the extent that
24 they could be, consensus decision-making bodies.
25 But it was understood that if a consensus was not

1 being reached on a decision in the time that I
2 thought represented -- you know, that the
3 conversation was productive and was helping develop
4 a direction, that I would make the decision. And
5 if a consensus could not be reached, even with a
6 productive, participative discussion, that I would
7 make the decision.

8 So I would say that almost always,
9 especially at this Executive Steering Committee for
10 this project, it was a consensus-based
11 decision-making, but I mean, I'll say if I was not
12 in agreement with the consensus of the Committee or
13 if I was sure in my own mind that that was not the
14 right decision, then that decision would not stand.
15 But I frankly can't recall an incident of that.

16 But in general, that is how I would
17 describe the decision-making process.

18 KATE McGRANN: In terms of Phase 2 of
19 the project, were you involved in any discussions
20 about what would be required in terms of potential
21 amendments to the Project Agreement for Phase 1 or
22 consent from the lenders on Phase 1 to accomplish
23 Phase 2?

24 KENT KIRKPATRICK: No. I remember
25 there was -- I think I was part of one discussion

1 which was how would a procurement process for Phase
2 deal with the fact that the consortium was
3 already on the ground with a huge piece of the
4 overall system that would need to be integrated and
5 how might that work.

6 But it was a very conceptual
7 discussion, that you know, no decisions were
8 intended to come from that discussion. It was the
9 beginning of, all right, how do you run a
10 competitive procurement process for a piece of an
11 integrated system where, you know, a big piece of
12 it is already on the ground, but that was it.

13 KATE McGRANN: And do you recall the
14 approximate timing of that discussion?

15 KENT KIRKPATRICK: No.

16 KATE McGRANN: Is that something that
17 was considered at all during the procurement phase
18 of the negotiation of the Project Agreement, how a
19 Phase 2 could be accounted for or worked into the
20 project?

21 KENT KIRKPATRICK: That actually may be
22 the timeline that that conceptual discussion that I
23 am talking about took place. In fact, it more
24 likely is the timeline that that took place in
25 versus while it was being constructed.

1 But I am not sure, and again, there
2 were no conclusions. It was sort of a preliminary
3 discussion that took place.

4 KATE McGRANN: Coming back to IO one
5 more time, you were holding up a document saying
6 that you thought that --

7 KENT KIRKPATRICK: I -- sorry, Kate,
8 I'm sorry. The only other thing I sort of recall
9 from that meeting was that it would be very -- it
10 would be very difficult to extract from the
11 consortiums commitments that they would or they
12 would not participate in a Stage 2 procurement
13 effort at that time and that, frankly, there
14 wasn't -- my sense is that the decision was there
15 was really no effective way to deal with that at
16 this point, that you know, we had to see how the
17 procurement went for Phase 1 and what the issues
18 were going to be for Phase 2.

19 KATE McGRANN: Okay, and just so that I
20 understand, what you recall is that sort of the end
21 point of that discussion was it would be difficult
22 to extract commitments or agreements from bidders
23 for the Phase 1 project about what would happen in
24 an eventual Phase 2?

25 KENT KIRKPATRICK: Exactly.

1 KATE McGRANN: When we were asking you
2 about IO's involvement in the construction phase,
3 you held up a document and said that you thought
4 you might be able to find something quickly in
5 there for us. Was that the MOU between IO and the
6 City?

7 KENT KIRKPATRICK: It is. It is dated
8 October 26, 2011.

9 KATE McGRANN: In your view, was IO's
10 involvement in the construction phase of the
11 project beneficial to the City and the project
12 overall?

13 KENT KIRKPATRICK: So for the period of
14 time I was there, yes, yeah.

15 KATE McGRANN: And was there any
16 discussion during the period of time that you were
17 there about lessening IO's role or changing it at
18 all as the construction period progressed?

19 KENT KIRKPATRICK: No, not that I
20 recall, no.

21 KATE McGRANN: Do you recall if there
22 were any concerns on the City's behalf about the
23 cost of IO's involvement in the construction phase
24 of the project and more generally?

25 KENT KIRKPATRICK: No. I mean, it was

1 a topic that was raised. I think I told you
2 already that initially the team, you know,
3 they -- I characterized it as they weren't
4 understanding of why was IO absolutely necessary,
5 that we had already built a team that we thought
6 would be able to deliver this.

7 And so, you know, cost was an issue
8 that was raised, but in my opinion, and as I think
9 it says in the reports to Council, that the cost of
10 IO was a cost that we would be incurring anyway
11 either through, you know, more billing through
12 Deloitte on AFP matters. Frankly, I thought it
13 would likely cost less, but I think what we told
14 Council is that it was almost like a fungible cost
15 and would be able to be contained within the budget
16 that we had for project management.

17 But in my own mind, I thought we would
18 probably end up paying more for some of the advice
19 that IO would give us because we would be getting
20 it from, you know, big six consulting firms like
21 Deloitte and others that tell other people how to
22 do things, whereas IO was actually on the ground
23 doing them.

24 KATE McGRANN: Ms. Young, any further
25 questions?

1 EMILY YOUNG: I just wanted to clarify
2 when, Mr. Kirkpatrick, you were talking about a
3 sinkhole earlier, was that the first sinkhole or
4 the second sinkhole that you were involved in
5 responding to?

6 KENT KIRKPATRICK: It was the first one
7 at the -- I forget what road it was on, but by the
8 University of Ottawa.

9 EMILY YOUNG: So not the Rideau Street
10 sinkhole in 2016?

11 KENT KIRKPATRICK: Right, yes.

12 EMILY YOUNG: Okay.

13 KATE McGRANN: The Commission has been
14 asked to look into the commercial and technical
15 circumstances that led to the breakdowns and
16 derailments on Stage 1. Are there any topics or
17 areas that we didn't discuss this afternoon that
18 you would suggest form part of the Commission's
19 investigation?

20 KENT KIRKPATRICK: Yeah, I don't know,
21 not specific topics, but I guess, I mean, as you
22 can imagine, this has been difficult to watch. You
23 know, clearly the go-live was not the result that
24 everyone was expecting and the problems have gone
25 on for a long time.

1 So it has been difficult to watch and
2 not be part of trying to manage them or resolve
3 them.

4 My sense, though, from -- and I have
5 had limited discussions with people at the City
6 since I left there with respect to this project,
7 but you know, you were asking questions earlier
8 about what the Project Agreement called for with
9 respect to certification of the system prior to
10 go-live. Just objectively, you know, just watching
11 what has happened and information from the media
12 and the rest, clearly I think something there
13 didn't work right, either that -- because clearly
14 the system was not ready for a hard cutover to the
15 entire system, whether there should have been a
16 transition go-live or -- and I don't know if the
17 certification required, you know, stress testing
18 the system with volumes and things like that. I
19 don't know any of that.

20 But clearly the system wasn't ready,
21 and so the consortium in stating that it was and
22 then receiving certification that it was, something
23 went wrong there.

24 With respect to the derailment, I don't
25 have any real insight into that other than I

1 would -- if I was there, I would be looking at why
2 is this consortium not performing, and I think it
3 likely has something to do with the fact that they
4 are not working well together. You know, it goes
5 back to almost that sense I had in some of those
6 Executive Sponsor meetings that there was friction
7 there.

8 And I don't know what the mandate of
9 your Commission is, your Public Inquiry is to get
10 at. I don't know what authority you have. I don't
11 know what you could compel them to do. But I think
12 a big part of -- and this is just a sense, but I
13 think a big part of why that derailment happened is
14 that the correct decisions with respect to
15 maintenance were not being made and I bet it falls
16 somewhere in between the train set provider and the
17 maintenance staff, but I don't think you'll get to
18 those, understanding those things, if your mandate
19 goes there, talking to one representative of that
20 consortium.

21 Like I think there are problems there,
22 and you know, it would be interesting to know who
23 is -- you wish you could read the minutes from
24 their Board meetings, but it would be interesting
25 to know who is suing who for what there, because it

1 is clear that the group has lost I am guessing
2 hundreds of millions of dollars and there have to
3 be some significant disputes that are happening
4 between them and I think it is bleeding over into
5 how they are actually performing their obligations
6 under the contract.

7 But those are just intuitions. I don't
8 have any insight.

9 KATE McGRANN: With respect to the
10 limited discussions that you have had with people
11 at the City that you mentioned, could you just tell
12 us who you were speaking with?

13 KENT KIRKPATRICK: I had one discussion
14 with Steve Kanellakos, and it was just about how he
15 was hopeful that things were going to go -- I can't
16 remember the date, but it was in or around the time
17 that RTG announced a significant change in the
18 executive leadership of the group, and Steve and I
19 were talking about something else and I had read
20 about that in the newspaper, and I said, So do you
21 think that is going to make a big difference? And
22 he said, We are very hopeful that it will.

23 Which sort of leads me -- again, that
24 is maybe part of my thought process of why -- like
25 maintenance issues, like that derailment, was it a

1 design issue or was it a maintenance issue? I
2 don't know, but the consortium making significant
3 changes in their on-the-ground leadership leads me
4 to believe that maintenance is a problem and people
5 are not performing roles and responsibilities.

6 KATE McGRANN: Just in terms of the
7 timing of that discussion, can you say whether it
8 took place before or after the system opened for
9 public service?

10 KENT KIRKPATRICK: Oh, yeah, far after,
11 much later than the opening. It was pre-pandemic
12 and it was -- there were -- I mean, I asked him
13 about it because I read in the newspaper about how
14 RTG was announcing a very experienced new executive
15 on the ground in Ottawa to resolve the issues.

16 KATE McGRANN: And any other
17 discussions with anyone at the City about the
18 system after you left the role of City Manager?

19 KENT KIRKPATRICK: No, not that I
20 recall. I may have had one discussion with John
21 Manconi shortly -- like no, I shouldn't say I may
22 have. I did have a discussion with John Manconi a
23 couple of months after go-live, but my recollection
24 is that one of the topics was just the difference
25 in the experience -- like the difference in the

1 behaviour that a train, a light rail system
2 required versus a rapid -- a bus rapid transit
3 system. I think the discussion was around -- you
4 know, because at the go-live the issues were, you
5 know, people trying to stop the doors, the doors
6 lock back, the train stops for ten minutes until
7 all the risk sensors and alarms are cleared and
8 everything else. I think it was a discussion
9 around that, about how some of the problems that
10 were being experienced were being, you know, the
11 result of the transit ridership learning the
12 differences between an LRT and a BRT.

13 KATE McGRANN: Okay, so that discussion
14 was about passenger behaviour as opposed to the
15 behaviour --

16 KENT KIRKPATRICK: Yes.

17 KATE McGRANN: -- required of the
18 operator?

19 KENT KIRKPATRICK: Right.

20 KATE McGRANN: And any other
21 discussions you recall with those at the City after
22 you left?

23 KENT KIRKPATRICK: No.

24 KATE McGRANN: The Commissioner has
25 also been asked to make recommendations to try to

1 prevent issues like this happening again going
2 forward. Any topics or specific recommendations
3 you would suggest be considered in that work?

4 KENT KIRKPATRICK: Again, like I feel
5 strongly that the Project Agreement that we
6 developed, which was a priority of my involvement
7 in this, you know, in terms of it being the first
8 time it was developed and I think we had the right
9 people at the table making the right decisions,
10 making some very innovative decisions. I feel that
11 the Project Agreement is a very good one. Your
12 work will determine whether -- you know, and I am
13 sure there are things that could be done
14 differently in it and perhaps that would help
15 prevent the kind of performance that we have seen
16 since the go-live.

17 I think we forced enough liquidity into
18 the system with the \$400 million, but for some
19 reason that consortium is not performing well, with
20 all the constructs of AFP in place.

21 So I would -- I guess if I was advising
22 you, if I was with you, I would be looking at why
23 isn't that consortium performing well and to what
24 extent is that a consequence of poor management or
25 other motivating factors within that consortium and

1 to what extent is it that the right rails -- you
2 know, or the right guardrails were not put on the
3 dynamic of the partnership itself in the Project
4 Agreement.

5 Like to what extent can you force
6 better actions and decision-making in that
7 consortium that you are tied to for 30 years, how
8 can you have better insight into that. How can you
9 effect better performance.

10 I don't know if there is anything
11 different than what we have in the agreement, but I
12 would encourage -- if I was doing your work, I
13 would be looking at that.

14 KATE McGRANN: Last question, I think.
15 Do you recall at any point during the drafting of
16 the Project Agreement a discussion of the need for
17 some time for the system to run before it opened
18 for revenue service, aside from trial running, to
19 shake out any bugs in the system, to identify any
20 elements that needed tweaks or retrofits or
21 anything like that?

22 KENT KIRKPATRICK: No. That would
23 have -- those discussions would have gone into, you
24 know, what was decided to put into the Project
25 Agreement with respect to that requirement and I

1 don't recall. That would have been early on, and I
2 don't recall anything about that, no.

3 KATE McGRANN: I --

4 KENT KIRKPATRICK: I mean, I think the
5 idea was if they are able to run the system for a
6 set period of time with, you know, the various
7 operating parameters being met and there is a third
8 party Certifier saying that that was achieved, the
9 City could rely on that.

10 KATE McGRANN: That is it for my
11 questions for today.

12 Mr. Wardle, did you have any follow-up
13 questions?

14 PETER WARDLE: I just have one question
15 for Mr. Kirkpatrick. Could you speak a little
16 about why operations was not included in the DBFM
17 model?

18 KENT KIRKPATRICK: Yeah, that was a
19 discussion at Executive Steering Committee. It had
20 to do -- it was fundamentally labour relations.

21 So as I think I said earlier, and I
22 don't like the term "no-brainer", but it is
23 typically pretty readily apparent why you should
24 include maintenance in a DBF or design/build, like
25 design/build/maintain, design/build/maintain and

1 maybe finance, yes.

2 Operations is a different thing. It
3 depends on what is involved in the actual
4 operations of the infrastructure. Those train sets
5 in some environments, if they are in a separated
6 corridor, they run without operators. They run on
7 an automated basis. We made the decision that we
8 wanted an operator to be present, and I think, you
9 know, it has proven to be the right decision in
10 terms of decisions that need to be made on a
11 realtime basis with respect to stoppages at
12 stations and the rest.

13 So then there was a discussion about,
14 okay, are we going to include -- so are there
15 decisions with respect to operating the trains that
16 will have a significant effect on how they are
17 maintained and how they should be built. And in
18 this case, it was determined not really. The
19 operator -- like, a lot of the -- the train
20 operates on an automated basis with a lot of
21 parameters, and the operator is really there to
22 make override decisions.

23 So you know, but important to have them
24 there.

25 So with that decision made, it was

1 then, okay, so we don't need to include it in terms
2 of there is not a lot of opportunity for much
3 better decisions to be made about how it is
4 maintained and how it is built. We are setting the
5 schedules regardless. It has to integrate with,
6 you know, the rest of the transit system, so
7 that -- so there is not a benefit to be had or a
8 value lost by keeping operations out of the DBFM.

9 Then it -- but I'll be frank about it,
10 related was a significant issue about is it ATU
11 work or isn't it, and of course ATU was very clear
12 right from the get-go that they wanted the
13 operations of the trains to be bargaining unit
14 work. There was actually, you know - and I can't
15 remember the details, but it is in the collective
16 agreement - discussions or resolution of some
17 collective agreement debates. It might have been
18 around the North-South -- or sorry, the O-Train.

19 I know there is a document where we got
20 legal opinion on how successful would ATU be in
21 claiming the work, so if we tried to keep it out of
22 ATU, a separate bargaining unit, and they -- you
23 know, would an arbitrator say, No, you are wrong,
24 that is ATU work to begin with, because if that was
25 likely, then there was absolutely no benefit into

1 trying to attempt to keep it out of ATU.

2 And you know, we were only a few years
3 since a very significant transit strike that
4 disrupted the livability of the City for a couple
5 of months, and it was deemed that, you know, there
6 would be -- it would be contestable, I would say,
7 that it was unit bargaining work.

8 And given that, that we shouldn't --
9 that shouldn't be an issue that we try to pursue,
10 that it would be separate.

11 But the decision that it wasn't part of
12 the DBFM was two-part: One, not a big value to be
13 gained by allowing the operations to be part of the
14 decision-making of the consortium and the design
15 and the construction and maintenance of the
16 infrastructure, and two, it would cause us a
17 significant labour relations issue.

18 KATE McGRANN: Who provided the advice
19 that, for the first aspect of that decision, that
20 decision-making of the operations wouldn't be a big
21 component of the work done by the consortia?

22 KENT KIRKPATRICK: So I remember the
23 discussion. I can't remember. It would probably
24 be -- IO might have had some part or some -- I am
25 just guessing right now, to be clear.

1 IO would have had a view of it just
2 from a conceptual understanding of DBFMs, and you
3 know, the transit planner consultants would have
4 had a view of it as well.

5 I mean, the scheduling was never up for
6 discussion obviously, right. Like the City wanted
7 to retain the authority over scheduling and the
8 ability to make changes to scheduling, and as I
9 have said -- you know, and the contract specified,
10 you know, the availability level of the trains.
11 You know, what decisions the operator is making in
12 the front of the trains doesn't really have a big
13 bearing on the availability level of the trains
14 outside of an event, like there is something on the
15 tracks that the automated system doesn't pick up.

16 KATE McGRANN: And ATU is ATU Local
17 279?

18 KENT KIRKPATRICK: Yes.

19 KATE McGRANN: Any further questions,
20 Mr. Wardle?

21 PETER WARDLE: No, that is it for me,
22 thank you very much.

23 KATE McGRANN: Okay, well, we can go
24 off the record then.

25 -- Adjourned at 2:14 p.m.

1 REPORTER'S CERTIFICATE

2
3 I, DEANA SANTEDICOLA, RPR, CRR,
4 CSR, Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were
6 taken before me at the time and place therein set
7 forth, at which time the witness was put under oath
8 by me;

9 That the testimony of the witness
10 and all objections made at the time of the
11 examination were recorded stenographically by me
12 and were thereafter transcribed;

13 That the foregoing is a true and
14 correct transcript of my shorthand notes so taken.

15
16
17
18 Dated this 30th day of May, 2022.

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20 

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25

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