

Ottawa Light Rail Commission

Marian Simulik
on Friday, May 6, 2022



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6	OTTAWA LIGHT RAIL COMMISSION
7	CITY OF OTTAWA - MARIAN SIMULIK
8	MAY 6, 2022
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15	--- Held via Zoom Videoconferencing, with all
16	participants attending remotely, on the 6th day of
17	May, 2022, 2:00 p.m. to 5:00 p.m.
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1 COMMISSION COUNSEL:

2 Liz McLellan, Litigation Counsel Member

3 Kate McGrann, Co-Lead Counsel Member

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5 PARTICIPANTS:

6 Marian Simulik: City of Ottawa

7 Peter Wardle, Betsy Segal: Singleton Urquhart

8 Reynolds Vogel LLP

9

10 Also Present:

11 Deana Santedicola, Stenographer/Transcriptionist

12 Benjamin Bilgen, Virtual Technician

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INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE/LINE NO.
1	December 2009 Downtown Ottawa Transit Tunnel Planning and Environmental Assessment Study.....	21:1

* * 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: 20:9

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages: 89:3

1 -- Upon commencing at 2:07 p.m.

2

3 MARIAN SIMULIK; AFFIRMED.

4 LIZ McLELLAN: So good afternoon. My
5 name is Liz McLellan, and I am Commission Counsel,
6 and I am joined by the co-lead on the Commission,
7 co-lead Counsel on the Commission, Ms. Kate
8 McGrann, and we will be conducting the interview
9 today.

10 So I am going to read you a quick
11 script, and before that, to confirm the witness has
12 been affirmed.

13 So the purpose of today's interview is
14 to obtain your evidence under oath or solemn
15 declaration for use at the Commission's public
16 hearings.

17 This will be a collaborative interview
18 such that my co-Counsel, Ms. McGrann, may intervene
19 to ask certain questions. If time permits, your
20 Counsel may also ask follow-up questions at the end
21 of this interview.

22 This interview is being transcribed and
23 the Commission intends to enter this transcript
24 into evidence at the Commission's public hearings,
25 either at the hearings or by way of procedural

1 order before the hearings commence.

2 The transcript will be posted to the
3 Commission's public website along with any
4 corrections made to it after it is entered into
5 evidence.

6 The transcripts along with any
7 corrections later made to it, will be shared with
8 the Commission's participants and their Counsel on
9 a confidential basis before being entered into
10 evidence.

11 You will be given the opportunity to
12 review your transcript and correct any typos or
13 other errors before the transcript is shared with
14 the participants or entered into evidence. Any
15 non-typographical corrections made will be appended
16 to the transcript.

17 Pursuant to section 33(6) of the Public
18 Inquiries Act, a witness at any inquiry shall be
19 deemed to have objected to answer any question
20 asked of him or her upon the ground that his or her
21 answers may tend to incriminate the witness or may
22 tend to establish his or her liability to civil
23 proceedings at the instance of the Crown or of any
24 person, and no answer given by a witness at any
25 inquiry shall be used or be receivable in evidence

1 against him or her in any trial or other
2 proceedings against him or her thereafter taking
3 place, other than a prosecution for perjury in
4 giving such evidence.

5 As required by section 33(7) of that
6 Act, you are hereby advised that you have the right
7 to object to answer any question under section 5 of
8 the Canada Evidence Act.

9 MARIAN SIMULIK: Okay.

10 LIZ McLELLAN: So with that, we will
11 begin your interview.

12 So, Ms. Simulik, I understand that you
13 were the City Treasurer from 2007 to December 2019.

14 MARIAN SIMULIK: That's correct.

15 KATE McGRANN: And you were also a
16 member of the Executive Steering Committee?

17 MARIAN SIMULIK: That's correct.

18 LIZ McLELLAN: So which date did you
19 become a member of the ESC?

20 MARIAN SIMULIK: I do not remember the
21 date. It was before we went into Stage 1, when
22 they actually established the Executive Steering
23 Committee for the project.

24 LIZ McLELLAN: And what was the purpose
25 of the committee? Why was it established?

1 MARIAN SIMULIK: It was an oversight
2 committee, so they reported a lot of -- as we
3 progressed towards the letting of the project and
4 there were a lot of decisions that needed to be
5 made and Council had delegated their authority to
6 the City Manager and the Executive Steering
7 Committee to make those decisions to keep the
8 project rolling.

9 And then after the project was let, to
10 actually oversee the progress of the project, they
11 would report -- the transit folks and the project
12 folks would report on a regular basis about how
13 things were going and raise issues and so on for
14 direction from the Executive Steering Committee.

15 LIZ McLELLAN: And when you refer to
16 the transit folks and the project folks, can you
17 just clarify who you mean?

18 MARIAN SIMULIK: Okay, so from -- there
19 was a RIO office, so at the beginning, I guess, I
20 think it was John Jensen would have been the head
21 of the RIO office, but then there were -- because
22 it was a transition to transit, they were involved
23 in it as well, so John Manconi and his fellow
24 directors in transit were also on -- were involved
25 with the committee.

1 LIZ McLELLAN: Okay, and then for the
2 sake of the transcript, I realize I referred to the
3 ESC, so that is the Executive Steering Committee,
4 and then, Ms. Simulik, you referred to the RIO,
5 which stands for the Rail Implementation Office?

6 MARIAN SIMULIK: That's correct.

7 LIZ McLELLAN: So when were you
8 on -- when did you cease to be on the ESC?

9 MARIAN SIMULIK: When I retired in
10 December of 2019.

11 LIZ McLELLAN: And in your role, did
12 you interact with the Finance and Economic
13 Development Committee?

14 MARIAN SIMULIK: Yes, I did. The
15 reporting on the progress of the project went to --
16 I'll refer to it as FEDCO, the Finance and Economic
17 Development Committee. So we reported to FEDCO,
18 and if there were issues that needed approval or
19 whatever, the first step was always to go to FEDCO.

20 LIZ McLELLAN: So you weren't sitting
21 on FEDCO. You were more reporting to FEDCO?

22 MARIAN SIMULIK: Only politicians sit
23 on a committee of Council, no staff.

24 LIZ McLELLAN: Right. And so then just
25 on this -- the issue of delegation of authority,

1 what were the general delegation of authority to
2 City Manager, if you could just walk us through
3 that?

4 MARIAN SIMULIK: I actually can't
5 because I know they delegated oversight of the
6 progress, as they normally do with projects, to see
7 them to fruition.

8 But I am not familiar with the specific
9 delegated authorities that they gave to the City
10 Manager. There was an extensive set, and I know
11 there were always discussions at the Executive
12 Steering Committee when we were making a decision
13 whether this was a decision that was within
14 his -- within the purview of what he had been
15 delegated or whether this was something that would
16 have to go to FEDCO and Council for approval.

17 So they -- but the specific authorities
18 that were given to the City Manager, I am not -- I
19 couldn't give you an in-depth explanation of those.

20 LIZ McLELLAN: And what about you?
21 Were you delegated with any authorities?

22 MARIAN SIMULIK: Well as a Treasurer,
23 you are delegated authorities. For example, they
24 had authorized the issuance of debt for this
25 project, so under my authorities I am able to go

1 and actually issue the debt.

2 So my authorities in the financial
3 realm are just within what is typical of a
4 Treasurer. There wasn't any extra authority
5 provided to me as a result of this project.

6 LIZ McLELLAN: And what is involved
7 with issuing the debt?

8 MARIAN SIMULIK: When the City issues
9 debt, basically what we do is we have a syndicate
10 of banks that we are in discussion with, and one is
11 designated as the lead in the syndicate, they get
12 the largest portion of the debt to issue.

13 So we go -- when we go to market, it is
14 our syndicate that actually puts it out there and
15 sells it for us. So there is all kinds of
16 decisions about timing and where we think we are
17 going to price it at and all kinds of things like
18 that.

19 And then it goes to market. It goes on
20 Bloomberg and it gets sold and usually within 15
21 minutes, and then we administer the debt, the
22 repayment of it, over the next whatever the term
23 is.

24 LIZ McLELLAN: Okay. And so can you
25 describe your involvement with Stage 1 of the

1 project?

2 MARIAN SIMULIK: With Stage 1, it was
3 basically just advisory for around financial
4 issues. I actually had -- my Deputy City Treasurer
5 was basically the point person from my department
6 who was involved in with the RFQ, setting the
7 financial parameters and when they came in
8 reviewing them, and she also looked at the results,
9 was on the oversight or the review team for the
10 financial component of the actual proposals itself.

11 So my involvement was early on deciding
12 how much the large "F", as they call it, the
13 large -- the external financial component, how
14 large that would be in this project.

15 And then it was just oversight and
16 advice and providing staff, my Deputy Treasurer, to
17 work on the project basically on a full-time basis
18 until contract award.

19 And then it was just providing advice
20 as we went along around the financial parameters,
21 of which there really weren't many.

22 LIZ McLELLAN: Okay. And what was your
23 role on the Executive Steering Committee? What did
24 that entail?

25 MARIAN SIMULIK: That was just what I

1 described to you. That was part and parcel,
2 attending meetings, listening to the progress
3 reports, providing advice if requested about any
4 financial aspects that were coming up. As I said,
5 there were little or no financial aspects that came
6 up. So that was my role.

7 LIZ McLELLAN: Okay. And then what
8 about -- I realize this was a bit later on, but the
9 Contingency Management Committee, can you speak to
10 your role on that committee?

11 MARIAN SIMULIK: Eventually at one
12 point we broke off the contingency portion of the
13 overall budget, which was \$100 million, and set
14 aside -- and had the contingency committee made up
15 of -- it was myself, the City Manager and the head
16 of Transit.

17 So when there was a request for use of
18 the contingency fund or budget, they would make
19 a -- whoever it was requesting would come in and
20 they would make the requests and explain what it
21 was for and why they needed it.

22 And then the three of us would have to
23 sign off on an approval for an allocation for use
24 of the contingency.

25 And then we would report on it. There

1 was I think it was quarterly reports to all of
2 Council, to FEDCO and all of Council, and we would
3 include a comment in there about the use of the
4 contingency, how much had been allocated, how much
5 had actually been spent, and so on, and report on
6 that.

7 So that was my involvement on the
8 Contingency Committee.

9 LIZ McLELLAN: And from your
10 involvement, was there a specific area or purpose
11 that made up the majority of the draws down on the
12 contingency fund?

13 MARIAN SIMULIK: Property was a big
14 issue, or the purchase of property was certainly a
15 big issue. But we had developed -- well, I
16 shouldn't say "we", because I never really did
17 anything with it, but the RIO office had developed
18 a Risk Register where they had identified all the
19 potential risks that they could foresee happening
20 with this project and in that register then they
21 would put in an assessment of the probability and
22 what it would cost if it happened.

23 And so as we went through, those items
24 on the Risk Register became items then we would
25 identify as part of the contingency because almost

1 all of those did not have another source of funding
2 for them.

3 LIZ McLELLAN: And when was the Risk
4 Register established?

5 MARIAN SIMULIK: It was established
6 very early on. That was one of the first things
7 they did when they established the Contingency
8 Committee was to make certain that we had a fulsome
9 Risk Register and just to see if we would have
10 enough funds in the contingency.

11 LIZ McLELLAN: And so when a risk was
12 identified, what was the process to sort of account
13 for that risk?

14 MARIAN SIMULIK: Are you talking in
15 terms of funds or just --

16 LIZ McLELLAN: The funds, yes.

17 MARIAN SIMULIK: Okay, so we had --
18 initially there was a number of specific items that
19 got allocated funds from the contingency, so then
20 the risks would be identified in the Register and
21 they would be totalled and they would be shown
22 against how much room there was in the contingency.

23 So they weren't actually allocated any
24 money, but they were assessed against it just to
25 make certain that, you know, we were always within

1 a reasonable reach of the contingency.

2 LIZ McLELLAN: I understand that there
3 was around \$52 million worth of draws on Project
4 Agreement variations. Do you recall what the
5 circumstances were of those draw-downs on the fund?

6 MARIAN SIMULIK: Not in particular.
7 There were draw-downs. I remember some of them
8 having to do -- there was something with radios.
9 There was all kinds of things that needed
10 draw-downs from the contingency, things that either
11 had been missed or a decision was made and we need
12 to improve this in some way, shape or form.

13 So the only one I can think of on the
14 top of my head was the need for some kind of radio
15 system for emergency responders.

16 LIZ McLELLAN: And can you recall any
17 funds required for amendments to the agreement that
18 would have comprised as part of that draw-down?

19 MARIAN SIMULIK: Amendments to the
20 agreements? No. The agreement, as far as I know,
21 was never amended. These were all either add-ons,
22 or I don't think there were any changes of scope.
23 They were all just additional things that were
24 added on as we progressed and got more granular
25 with the design.

1 LIZ McLELLAN: Okay. So just bringing
2 it back to the early days, so I want to understand
3 how the City's budget for the project was first
4 arrived at, so if you remember the circumstances
5 around that.

6 MARIAN SIMULIK: The budget -- okay, so
7 there was estimates and there is a budget. A
8 budget was finally set, a full budget in 2012, but
9 we had a number for what this would cost as early
10 as I think 2018 -- or sorry, 2008.

11 So initially there was a project or an
12 idea called the Downtown Ottawa Transit Tunnel.

13 So they did an environmental assessment
14 and they came up with a value for it, and that
15 was -- and that could even have been as early as
16 2007, but I think it was 2008, and they came up --
17 I believe the number at that time -- and you have
18 to remember an environmental assessment is not a
19 complete project number. It is just basically what
20 it is going to cost you to construct and to -- and
21 for the vehicles.

22 And the number they came up with I
23 think was about \$1.8 billion. There was concern
24 that was sort of a big number for the City of
25 Ottawa. We never had a project that big. And

1 there was concern that if we had approved -- if
2 Council approved that type of project, there would
3 be no funding left for other initiatives in the
4 transit area, and there was still a need to have an
5 expansion of the bus rapid transit system, et
6 cetera, et cetera.

7 So we, the Finance Department,
8 undertook to look at all of the capital needs over
9 a longer time period to determine whether in fact
10 the City could fund their share of the Downtown
11 Ottawa Transit Tunnel Project and the conclusion we
12 came to, because we were well below the Provincial
13 ceiling for debt issuance, that the City had the
14 financial capacity to do that.

15 The next time the project got put
16 forward in front of Council basically asking for
17 direction to proceed with it - because it was just
18 identified before in the Transportation Master
19 Plan, it wasn't an actual project, per se, but just
20 identified - it was about, let me see, in 2010.
21 And at that time the 1.8 billion was increased to
22 2.1 billion, and at that time property was added
23 in. It was also the construction and the vehicles.

24 But there was no escalation for
25 inflation to that number, so it was set at 2.1

1 billion and Council gave direction to proceed with
2 that particular project.

3 We then worked with that. There was,
4 that number, at that point, 2.1 billion, again, it
5 became a concern, could the City afford that? So
6 we prepared what was called the Transit Long-Term
7 Financial Plan, and that plan, because transit has
8 its own tax rate and we issued debt just for
9 transit itself, it is sort of its own little entity
10 in terms of finance.

11 So we looked -- our long-term financial
12 plan went out I think it was -- we went out to 2042
13 in it, and we looked at not only the capital costs
14 of transit over that time period, but also all the
15 operating costs and all the funds we knew that were
16 coming in to support it to see whether in fact we
17 could afford the new number and, again, the
18 conclusion was as long as the other levels of
19 government paid their one-third of the share and
20 that the City kept its tax increases and fare
21 increases at the rate of inflation, we could afford
22 this particular number.

23 A number of iterations went on, because
24 that number, if you think about it, if it doesn't
25 have inflation over that time period, you are

1 talking probably 400, \$500 million worth of
2 inflation. Plus there was a requirement from the
3 Provincial Government to use an alternative service
4 delivery, which meant we had to have private sector
5 financing on it, which is more expensive to the
6 City. And that at the end cost an additional \$177
7 million.

8 So there was a desire from Council to
9 try to keep within the original envelope that
10 Council had approved, so a number of value
11 engineering changes were made to try to accommodate
12 that, and that is in fact what happened when we
13 went in 2012 to Council. They approved -- the
14 budget went up just slightly to 2.13 billion plus
15 the 63 million for transition from bus to light
16 rail and another -- the 100 million for
17 contingencies.

18 So we were able to more or less keep it
19 within what Council had requested.

20 And that is how the budget got set. So
21 there were portions of the budget that were set
22 beforehand. For example, I believe in 2010 we had
23 to set a budget -- or 2012 -- or sorry, 2010, for
24 property acquisitions, so some 74 million got
25 approved beforehand. But the big budget ask and

1 the setting of it was all that December 12th of
2 2012 meeting, the 2.13 billion.

3 LIZ McLELLAN: And may I ask, are you
4 referring to notes?

5 MARIAN SIMULIK: I have a few notes on
6 a page here, yes.

7 LIZ McLELLAN: Can we ask to take a
8 look at those following the interview?

9 U/T MARIAN SIMULIK: Certainly.

10 LIZ McLELLAN: Okay, thank you. So
11 thank you for that. I just want to confirm a
12 couple of things.

13 So you spoke to the initial assessment
14 and there was a change, I think it was from 1.4 to
15 2.1, but really that 2.1 was established in a
16 December 2009 study. Do you recall that study?

17 MARIAN SIMULIK: No, I'm sorry, I
18 don't. I can -- the only thing I have for
19 reference is the Council report, when it was set at
20 2.1. There was most likely a study backing it, but
21 I am not familiar with that study.

22 LIZ McLELLAN: Well, I am just going to
23 put this study to you, and this will be Exhibit 1.
24 It is a December 2009 Downtown Ottawa Transit
25 Tunnel Planning and Environmental Assessment Study.

1 EXHIBIT NO. 1: December 2009 Downtown
2 Ottawa Transit Tunnel Planning and
3 Environmental Assessment Study.

4 LIZ McLELLAN: Are you familiar -- I
5 mean, of course, this was a long time ago, so I am
6 just putting this to you. Are you familiar with
7 this report?

8 MARIAN SIMULIK: No, sorry.

9 LIZ McLELLAN: Okay. And so, of
10 course, this has the 2.1, and then are you familiar
11 with the Council vote approving the 2.1 number from
12 a report and environmental assessment?

13 MARIAN SIMULIK: And that was January
14 of 2010 when Council --

15 LIZ McLELLAN: Yes.

16 MARIAN SIMULIK: Yes, I am familiar
17 with the Council report.

18 LIZ McLELLAN: And at that time the
19 budget was set at \$2.1 billion and Council approved
20 that \$2.1 billion --

21 MARIAN SIMULIK: That's correct. Well,
22 they approved that as the target. They didn't
23 actually establish a budget until -- a budget isn't
24 established until they actually take a vote and a
25 project is there. It is -- this was a budget

1 target that they set in 2010.

2 LIZ McLELLAN: Okay. And then the
3 budget later goes up to 2.13, that really from that
4 environmental assessment to the final number it is
5 a small increase?

6 MARIAN SIMULIK: That's correct, but
7 don't forget there is also the 100 million
8 contingency on top of that.

9 LIZ McLELLAN: Right.

10 MARIAN SIMULIK: So before that had
11 included contingency.

12 LIZ McLELLAN: Okay. So then I guess
13 the \$2.1 billion, did that account for financing
14 and transaction costs?

15 MARIAN SIMULIK: No, the initial one
16 did not.

17 LIZ McLELLAN: Right.

18 MARIAN SIMULIK: The second one, the
19 one they approved, the 2.13, yes, it included the
20 additional 177 million for financing and
21 transaction costs.

22 LIZ McLELLAN: So you spoke a bit to
23 this, but what approach was taken to calculating
24 the contingency for the project?

25 MARIAN SIMULIK: To be honest with you,

1 I don't recall what the mechanism was to
2 establishing 100 million.

3 LIZ McLELLAN: And who else would have
4 been involved in that decision? Were you heading
5 up that decision or --

6 MARIAN SIMULIK: No, that was actually
7 done by the Project Team, by RIO and Ms. Monkman,
8 my Deputy, would have been involved in that.

9 LIZ McLELLAN: And do you remember who
10 at RIO was involved in that?

11 MARIAN SIMULIK: Oh, at that point in
12 time, who was -- the guy who was heading RIO -- off
13 the top of my head, I can't think of who it was.

14 PETER WARDLE: Maybe I can help. John
15 Jensen?

16 MARIAN SIMULIK: No, it wasn't John at
17 that time in 2012. Wasn't already moved on to --
18 who was the next guy, sorry.

19 PETER WARDLE: It is okay, if you can't
20 remember -- I think the next one was Steve Cripps,
21 but I -- I think I have this right, but it doesn't
22 matter.

23 MARIAN SIMULIK: It was either one of
24 those two.

25 LIZ McLELLAN: Okay. And in terms of

1 adjustments to the contingency amount, were there
2 adjustments made over time that you are aware of?

3 MARIAN SIMULIK: There were none made
4 before I left, so there may have been some made
5 after, but when I left, it was still at 100
6 million.

7 LIZ McLELLAN: Okay. And then in terms
8 of your interaction with City Council and FEDCO on
9 the budget, what did that entail?

10 MARIAN SIMULIK: Well, this, presenting
11 the report in December of 2012, so that was -- they
12 approved it at that time. And then we reported on
13 it on a -- we report on capital works on a
14 quarterly basis, but it was also included in the
15 report, the quarterly reports that RIO issued on
16 the progress of the project.

17 LIZ McLELLAN: And at the time, I
18 believe the Mayor would have been Mayor Larry
19 O'Brien, up until 2010; correct?

20 MARIAN SIMULIK: Yes, I believe that
21 was the election year.

22 LIZ McLELLAN: And did you have any
23 discussions with Mayor Larry O'Brien's office or
24 his staff about the budget amount?

25 MARIAN SIMULIK: Are you referring to

1 the final budget amount of 2.13? Because he wasn't
2 the Mayor then.

3 LIZ McLELLAN: Just the estimate, just
4 the preliminary. Did he gave any direction on the
5 amount?

6 MARIAN SIMULIK: I don't remember
7 having any discussions with him on this particular
8 budget, but we discussed many things. It may have
9 come up. Sorry, I can't remember.

10 LIZ McLELLAN: You don't recall him
11 asking about the City's ability to take on such a
12 budget or anything like that or the size of the --

13 MARIAN SIMULIK: That may have
14 been -- sorry to interrupt. That may have been the
15 reasoning behind the decision to do the long-term
16 financial plan, to ensure that in fact the City
17 could -- had the financial capacity to take this
18 on, plus all the other transit priorities and
19 operations that would be happening at the same
20 time.

21 LIZ McLELLAN: And of course,
22 accounting for the fact that this was awhile ago,
23 but when you say "may have been", is there any
24 specific recollection that you have on that point
25 or is that just a guess?

1 MARIAN SIMULIK: My recollection is in
2 discussing about the need to show whether in fact
3 we had the capacity were all discussions that I had
4 with Kent Kirkpatrick, the City Manager at the
5 time. I don't remember a discussion with Mayor
6 O'Brien, but that may have happened. I don't
7 recall.

8 LIZ McLELLAN: Okay. And we discussed
9 this, but how was construction inflation, overall
10 inflation, worked into the \$2.1 billion, and just
11 within that question too, expert advice, third
12 party advisors, how did that come to be?

13 MARIAN SIMULIK: So in the initial 2.1
14 billion, there was no inflation, no construction
15 inflation in there. It wasn't in construction
16 dollars. It was in 2009 dollars.

17 So when it finally got approved in
18 2013, that was in construction dollars because they
19 had been able to find ways to reduce the overall
20 cost of it to be able to absorb the inflation over
21 that time period. So everything was in
22 construction dollars when it finally got approved.

23 LIZ McLELLAN: And then so in 2010, you
24 are not at the final budget yet, but you are still
25 at 2.1 versus 2.13, and Mayor Watson is elected I

1 believe in the fall of 2010 and did he express any
2 particular concerns about the budget at the time
3 that you recall?

4 MARIAN SIMULIK: Not that I recall.
5 Again, my discussions were mainly with Kent
6 Kirkpatrick at that time and about the need again
7 to show that the City had the financial capacity.
8 Well, I shouldn't say show. To determine whether
9 the City had the financial capacity to undertake
10 such a large project.

11 LIZ McLELLAN: And what kind of
12 discussions did you have with Kent Kirkpatrick
13 overall about the affordability of the budget?

14 MARIAN SIMULIK: Well, we brought in
15 PricewaterhouseCoopers to actually do the model for
16 us, so we had many discussions with him about the
17 stress tests that we actually put on the model,
18 because we modelled it with what we thought what
19 would happen and then we wanted to say, okay, so
20 debt costs, if the cost of interest goes up by 1
21 percent or 2 percent, what happens there, what
22 happens if inflation.

23 So we did a number of stress tests to
24 the model to see what would happen to our ability,
25 our financial capacity under all those scenarios.

1 So we had discussions with him about
2 those types of things and then we presented the
3 results to him, and that was the discussions we
4 had. I don't recall any others.

5 LIZ McLELLAN: Okay, and then over the
6 life cycle of the project, do you recall
7 discussions, and we'll get into this in more
8 detail, but just generally -- obviously these
9 discussions would have gone through the City
10 Manager, but discussions with City Council or the
11 Mayor or FEDCO about the implications of going over
12 the budget?

13 MARIAN SIMULIK: We had in the
14 long-range financial plan, so we had stress tests
15 in there to see what would happen if it went higher
16 than we had projected and so on.

17 So they had that discussion. The
18 understanding -- they were looking to see what kind
19 of cushion we would have, and so we were able to
20 show them, you know, how far away they were from
21 the debt ceiling and so on.

22 There was really no discussion, from
23 what I understand or what I remember, about this
24 particular budget going over-budget. It was just
25 how much financial capacity we had left after all

1 of the various priorities were included in the
2 analysis.

3 LIZ McLELLAN: And did any -- well,
4 first of all, so the City obviously retained quite
5 a few third party advisors, expert advisors over
6 the life cycle of the project. Were their fees and
7 costs accounted for in the budget?

8 MARIAN SIMULIK: They are in the -- in
9 the budget for light rail?

10 LIZ McLELLAN: Yes.

11 MARIAN SIMULIK: Are you referring to
12 the consultants I would have used?

13 LIZ McLELLAN: All consultants, like
14 when you were looking at the modelling and you were
15 speaking with PricewaterhouseCoopers and you were
16 going through what the numbers should look like,
17 were expert consultants --

18 MARIAN SIMULIK: No, those budgets were
19 not included in the light rail 2.1 billion. Those
20 were actually costs that the finance department
21 incurs. We do this as part of our role at the
22 City. We incur consulting costs on a regular basis
23 for a variety of long-range planning, and so, no,
24 that was absorbed by the Finance Department.

25 LIZ McLELLAN: Okay, so then the 2.13

1 and the -- what was involved in that number?

2 MARIAN SIMULIK: So involved in that
3 number would have been the construction itself,
4 which was a fixed price contract. There would have
5 been the City portion, which is all of the RIO and
6 the -- there is all kinds of work done by other
7 departments that needed to be charged there,
8 property, for example, and then the transaction
9 costs. And what else would have been in there?
10 Not the contingency, that was separate. The
11 vehicles were in there.

12 KATE McGRANN: One follow-up question,
13 if I may, because I think the two of you may have
14 been speaking about different things. I understand
15 that PwC, the work that it did on the overall
16 transit planning model, that cost was absorbed by
17 the finance department; is that right?

18 MARIAN SIMULIK: That's correct. That
19 is my recollection, I should say.

20 KATE McGRANN: Understood. With
21 respect to consultants and advisors who worked
22 specifically on Stage 1 of Ottawa's LRT for the
23 City, for example, capital transit partners and
24 consultants who came on later, can you speak to
25 where those costs appeared in the budget for the

1 project or otherwise?

2 MARIAN SIMULIK: Those would have been
3 included in the \$2.1 billion LRT budget.

4 LIZ McLELLAN: Did any of the City's
5 advisors ever suggest that the budget should be
6 increased?

7 MARIAN SIMULIK: Not to me they didn't,
8 but they may have spoken to someone else.

9 But I know there was initial concern
10 initially because, like I said, there was no
11 construction inflation in there, and that is why
12 they did a whole bunch of value engineering to, you
13 know, move where the actual tunnel was going to be
14 built and how deep it was going to be and all kinds
15 of things like that to bring it back within the
16 envelope that had been identified initially.

17 So but no consultant ever spoke to me
18 about needing to increase the budget.

19 LIZ McLELLAN: And so no conversations
20 that you recall with like Infrastructure Ontario
21 particularly because they would have been advising
22 on procurement?

23 MARIAN SIMULIK: Not with me. They may
24 have spoken to someone else, but I basically was
25 the recipient of the number that was to be used. I

1 wasn't a generator of that number because it is
2 engineering, not finance.

3 The only concern -- the only number I
4 was able to -- I shouldn't say influence, but the
5 decision came down to what we were comfortable with
6 was really how large the public sector debt
7 component would be in there because the larger the
8 public sector debt, the more costly to the City.

9 So we worked with Deloitte and
10 Infrastructure Ontario to look at a number of
11 scenarios to determine what size it should be, what
12 was the optimal size of that private sector debt
13 component and where was -- what was the appropriate
14 risk trade-off.

15 So that is why it was set initially at
16 400 million, up to 400 million.

17 LIZ McLELLAN: Okay. And then you
18 spoke briefly, if you could just walk us through,
19 you said that the Province requires entering into
20 an AFP model if there is a project that meets
21 certain requirements. Can you expand on that?

22 MARIAN SIMULIK: It is in their
23 contribution agreement that we are required to do
24 an alternative financing for the project, and then
25 so it was part of their 600 million that, as I say,

1 required it, and then Infrastructure Ontario, of
2 course that is actually in their mandate of what
3 they do. So Infrastructure Ontario performed that.

4 So yes, they required that as part of
5 their contribution, that it couldn't just be
6 City-funded.

7 LIZ McLELLAN: Okay, and then on
8 Provincial funding, I think, you know, the initial
9 estimate came from that environmental assessment
10 and you mentioned how high level environmental
11 assessments are in terms of funding and funding
12 expectations, that it is kind of like an initial
13 estimate?

14 MARIAN SIMULIK: That's correct.

15 LIZ McLELLAN: So typically a budget
16 would look very different after modelling following
17 an environmental assessment?

18 MARIAN SIMULIK: You -- there is a
19 number of things that aren't included in an
20 environmental assessment, and so there is a need to
21 get Provincial commitment early, which means you
22 are using an EA, an environmental assessment, but
23 it is not a fulsome picture of the actual costs.

24 So that is why we ended up with 600
25 million, which is not one-third of 2.13 billion.

1 LIZ McLELLAN: So on that note then,
2 the City enters into discussions with the Federal
3 and Provincial Government, and I think that is in
4 2009, 2010, and is there a sort of cap because of
5 that initial estimate in terms of the City's
6 discussions with the Provincial Government and the
7 Federal Government for funding?

8 MARIAN SIMULIK: I didn't partake in
9 those discussions with either the Federal or the
10 Provincial Government. My understanding is that
11 any requests to increase it beyond the 600 million
12 they initially committed were met with a no.

13 LIZ McLELLAN: And do you know why
14 those requests were met with a no?

15 MARIAN SIMULIK: No, I don't.

16 LIZ McLELLAN: Okay. And so were
17 you -- you weren't involved in the negotiations or
18 discussions with the Provincial or Federal
19 Governments?

20 MARIAN SIMULIK: No, I was not.

21 LIZ McLELLAN: And from what I recall,
22 the Provincial commitment to be 600 million fixed
23 amount, that was earlier than the Federal
24 commitment; do you know why? It was about a year
25 before.

1 MARIAN SIMULIK: Okay, I don't remember
2 any of that, so I couldn't tell you.

3 LIZ McLELLAN: Okay. So Ottawa's
4 limitations in terms of funding discussions with
5 the Provincial and Federal Government and that it
6 was sort of a fixed amount and there was no going
7 over that amount, did that affect future funding
8 discussions or budget discussions because it
9 limited the City's ability to get more funding?

10 MARIAN SIMULIK: It affected -- it
11 didn't -- it affected the approach that we were
12 taking because all of a sudden all of the
13 construction inflation, any additional costs would
14 all be borne by the City, because their
15 contribution was fixed.

16 So automatically, there was a desire to
17 try to constrain the costs, to find ways to reduce
18 the overall costs, because everything that was
19 being added on was a City cost.

20 So yes, it did affect how the budget
21 was finally dealt with. If the Province or the
22 Feds had been there, it may not have come in at
23 this amount. It may have. I can't tell you. That
24 is speculation. But yes, there was a desire to
25 reduce the impact on the City as a result of their

1 decision not to increase their contributions.

2 LIZ McLELLAN: And where did that
3 direction come from?

4 MARIAN SIMULIK: Which direction are
5 you speaking of?

6 LIZ McLELLAN: For the City to reduce
7 costs and not go over the budget.

8 MARIAN SIMULIK: It wasn't to reduce
9 costs. It was to keep within the envelope.

10 So Council had approved 2.1 billion.
11 Then you start doing your detailed review and
12 design and you realize, oh, construction inflation
13 alone is going to increase it by 'x'.

14 So then it was how do we bring it back
15 to within what Council had directed, the \$2.1
16 billion budget target.

17 LIZ McLELLAN: So who was sort of
18 having those discussions and saying we need to make
19 sure we stay within 2.1?

20 MARIAN SIMULIK: That would have been
21 staff. That would have been through the City
22 Manager and through the RIO office that those
23 discussions would have been had.

24 LIZ McLELLAN: And were you involved in
25 those discussions?

1 MARIAN SIMULIK: We may have talked
2 about it at Executive Steering Committee because
3 they were reporting to us on the results of the
4 work that they were doing and in order to bring
5 it -- to keep it within the target.

6 So I am imagining I was, but
7 specifically I cannot tell you. I don't remember
8 those discussions at the Executive Steering
9 Committee.

10 LIZ McLELLAN: So you don't recall any
11 discussions about, you know, saying we need to make
12 sure that we stay within this 2.1; what are we
13 going to do at that Executive Steering Committee
14 level?

15 MARIAN SIMULIK: I remember discussions
16 that our target was 2.1 billion and how do we get
17 it to be within 2.1 billion. So the work that was
18 undertaken, so there was regular reporting on
19 discussions about alignment, discussions about
20 debt, all those types of things.

21 LIZ McLELLAN: So what -- to the best
22 of your recollection, which measures or which areas
23 sort of took the hit in making sure that that 2.13
24 was the constant number?

25 MARIAN SIMULIK: So I wouldn't describe

1 it as taking a hit. I would say there were areas
2 that were amended, and I think you actually ended
3 up with a better system as a result of it.

4 For example, the depth of the tunnel
5 was one area.

6 LIZ McLELLAN: All right.

7 MARIAN SIMULIK: Which that is a
8 positive thing that it is not as deep as it was.

9 There was supposed to be a station
10 underneath the Rideau Canal. That got moved.

11 There was the actual alignment itself
12 so that it goes under Queen Street as opposed to
13 going underneath buildings that go along Queen
14 Street.

15 So all those things I think make for a
16 better system, so I wouldn't describe it as a hit.
17 But those are the types of -- those are the big
18 things that allowed it to remain within the target.

19 Another one, for example, was the
20 decision about the maximum of \$400 million in
21 private sector debt. Deloitte and IO were
22 initially modelling a billion dollars, and you
23 know, that is hundreds and hundreds of millions of
24 dollars more in interest charges on this project.
25 So you know, I think we found the sweet spot, and

1 that was able to reduce the impact by I think
2 probably at least \$200 to \$300 million.

3 LIZ McLELLAN: So how -- in terms of
4 the discussions with Deloitte and IO about bringing
5 the debt allowance from a billion to 400 million,
6 how did that shake out?

7 MARIAN SIMULIK: We had a number of
8 discussions with them and they presented us with
9 scenarios, and they were looking at trying to value
10 the risk that we were trying to transfer over to
11 the private sector and what was that worth to the
12 City.

13 And so the biggest risk we had, of
14 course, was a collapse in the tunnel, and they had
15 valued it at about \$600 million was potentially
16 what it could cost if the whole thing collapsed.

17 And so how do we transfer the -- how do
18 we get that risk over to them. What is the
19 corresponding amount of debt that they should have
20 that is their skin in the game.

21 So through all of those discussions,
22 and we went back and forth with several scenarios,
23 we ended up with -- we thought the good trade-off
24 was about \$400 million of risk on our side, \$400
25 million worth of debt from the private sector.

1 LIZ McLELLAN: So that is really
2 accounted for then with the tunnel not being as
3 deep as it was, if you are talking about \$600
4 million?

5 MARIAN SIMULIK: I don't remember at
6 that point in time whether those decisions had been
7 made about reducing the depth of the tunnel, but IO
8 had done an assessment about what they thought the
9 overall risk would be that the City, if something
10 bad would have happened there, what potentially we
11 could be on the hook for.

12 LIZ McLELLAN: Okay. And in those
13 discussions about, you know, which areas I guess
14 that you could be more efficient on to stay under
15 that 2.1, was the Mayor's Office or the Mayor or
16 City Council ever involved in those discussions?

17 MARIAN SIMULIK: I don't believe City
18 Council was because what we would do is when we
19 would actually have a decision about changing
20 something to make it, as you say, more efficient,
21 we would bring that to Council and they would have
22 to approve that change. So they had to approve the
23 change to the depth of the tunnel and where the
24 layout and so on. They approved the amount of
25 financing that we had on the project.

1 So with respect to the Mayor's Office,
2 the discussions there may have taken place, but
3 that would have been between the City Manager and
4 the Mayor's Office. That is sort of the conduit
5 between the bureaucracy and the Mayor's Office is
6 the City Manager's office.

7 LIZ McLELLAN: So when the discussions
8 turned to finance or the budget, it would just be
9 between the City Manager and the Mayor and you
10 wouldn't necessarily be involved?

11 MARIAN SIMULIK: The budget for this
12 particular project or the budget writ large?

13 LIZ McLELLAN: Yes, for this particular
14 project, yes.

15 MARIAN SIMULIK: For this particular
16 project, it most likely -- I may have been in
17 meetings. I don't recall any, but I may have been
18 in meetings with them. But yes, because the City
19 Manager was tasked with this particular project and
20 he is the touch point for the bureaucracy with the
21 Mayor's Office, he would have had many discussions
22 I am certain with the Mayor around the cost, the
23 overall cost.

24 LIZ McLELLAN: So the Mayor or the
25 Mayor's Office would have never, you know,

1 requested that you step in for a briefing, let's
2 say, because you would have been like the
3 specialist in that area?

4 MARIAN SIMULIK: Myself or Mona
5 Monkman, either one of us, and they may have, but
6 I'm sorry, I don't recall any.

7 LIZ McLELLAN: Okay. Are you aware of
8 RTG or OLRTC or any of the subcontractors having to
9 inject funds into the project to account for
10 additional funds that were needed that were not
11 available?

12 MARIAN SIMULIK: So they had a fixed
13 price contract. I know they did not get their
14 payments as per the schedule, the milestone payment
15 schedule, because they didn't get to revenue
16 service availability, they didn't get to
17 substantial completion, as per the schedule.

18 So at those point in times, if they
19 don't have City money coming in, they are either
20 having to inject funds themselves or they are going
21 to their short-term lending partners to get
22 additional funds.

23 But their financing was basically their
24 concern. We would pay them as per the milestone,
25 as per the Project Agreement, the milestones that

1 were established in there.

2 LIZ McLELLAN: So we'll get to this
3 later, but in terms of the City stepping in later
4 to guarantee RTG's debt, I assume there would have
5 been additional reporting, and was there any kind
6 of reporting about the funds that RTG -- that were
7 outgoing for RTG or OLRTC, any kind of reporting
8 like that?

9 MARIAN SIMULIK: There was some
10 reporting when we were finally -- we took over the
11 long-term debt. We didn't guarantee it. We took
12 it over.

13 So there was reporting at that point in
14 time, and then we could see that they had had to
15 put in some more money, but I don't remember if how
16 they put it in was equity or whether it was debt,
17 but I -- because they weren't receiving City funds,
18 they had to keep going somehow, so it was up to
19 them to find a way to do it.

20 LIZ McLELLAN: And do you recall if it
21 was RTG or -- and then, sorry, for the sake of the
22 transcript, RTG is Rideau Transit Group. So do you
23 recall if it was RTG or OLRTC that was injecting
24 the funds or both?

25 MARIAN SIMULIK: I'm sorry, no, I don't

1 recall.

2 LIZ McLELLAN: Okay. Sitting here
3 today, just what we have discussed, do you feel
4 that the budget was sufficient, the 2.13 for the
5 project's needs, considering, you know, additional
6 funds being injected and, you know, all the
7 modelling that you had done previously?

8 MARIAN SIMULIK: So the construction
9 portion of it, the contract that was let with RTG
10 was fixed price and it had an affordability cap on
11 it, and all of the private sector bidders came in
12 within that affordability cap.

13 So the private sector was telling us
14 that the budget was sufficient. So otherwise they
15 would have bid at a higher price, but they didn't.
16 They bid at what we had or below what we had
17 established as the affordability.

18 So if they had to inject later, that
19 was because they didn't meet their milestones.
20 They didn't get to revenue service availability.
21 They didn't get to substantial completion when they
22 said they would.

23 So the City is on the -- the City is
24 not on the hook when they don't deliver. That was
25 the whole point of structuring it the way it was

1 structured is that they were -- that was their
2 incentive to get things done as per the timelines.

3 So I don't think there was a problem
4 with the budget.

5 LIZ McLELLAN: But to be considered or
6 to be chosen as the successful proponent, they had
7 to be within that affordability cap, right?

8 MARIAN SIMULIK: They actually didn't
9 because we had a number of what we referred to as
10 "off ramps". We were prepared for a situation,
11 even though we had been working with the three
12 companies that bid on it, to basically try to find
13 a way to help them come in and there were changes
14 made and one of them even was the financing. We
15 went down from 400 million to something like a
16 minimum I think of 200 or 250 million.

17 So we were working with the three
18 bidders all the time to try to find ways to reduce
19 the overall costs to them, to make certain that
20 they could come in within the affordability.

21 But we were prepared if they didn't
22 come in within that cap. We had a bunch of off
23 ramps to basically either scale back some of the
24 works that would take place, and if none of that
25 happened, we were prepared to go to Council with a

1 bid, a final bid that was above the affordability
2 cap.

3 So, you know, I don't know why the
4 private sector would be saying that the budget is
5 not sufficient. They bid on it and bid at the
6 affordability cap level.

7 LIZ McLELLAN: Okay. Ms. McGrann, I
8 don't know if you have any follow-up questions on
9 what we discussed?

10 KATE McGRANN: I do not, thank you.

11 LIZ McLELLAN: So we'll move on to the
12 selection of the delivery model. So which other
13 models were considered?

14 MARIAN SIMULIK: There was a report.
15 All the models were initially considered. I think
16 it was a Deloitte report, and they looked at all of
17 the various scenarios that could be and basically
18 found I think three or four were the best from an
19 objective of meeting the City's objective and
20 transferring risk and what would be even cost.
21 That was one of the considerations.

22 So they looked and they did a total
23 assessment and came up with three or four models.
24 All of the models included the finance component.
25 They did not include -- in their analysis, the ones

1 that had only City financing fell to the bottom, so
2 they were not recommended.

3 And then we worked -- the
4 administration worked to refine that down, so they
5 were design/build/finance/maintain, and I think
6 operating might have been in there initially as
7 well, and then through the process of defining the
8 project and the RFQ and the RFP, we ended up with
9 design/build/finance/maintain.

10 LIZ McLELLAN: So what were the upsides
11 to the DBFM that made the City go with the
12 design/build/finance/maintain model?

13 MARIAN SIMULIK: It was basically that
14 the City didn't -- the upsides were that if you had
15 design/build and maintain, you were basically
16 bringing in people who were experienced in the rail
17 business, who would be able to design and build it,
18 and the City didn't have experience in -- really
19 any experience in the rail business.

20 But then if they maintained it as well,
21 you tied that in there. Then you could expect that
22 they would design it and build it in a way that it
23 was easy to maintain or wasn't going to -- you
24 weren't going to run into maintenance issues
25 because they were going to be responsible for

1 maintenance as well.

2 And then the finance component was
3 added in there so that in the event that there was
4 a failure on their part to deliver, they had the
5 pressure of external financing on them to meet
6 their deadlines.

7 So that was the reasoning for that,
8 more skin in the game, as they call it.

9 LIZ McLELLAN: So we know that the
10 Provincial Government obviously required an AFP
11 model. What about the Federal Government? Did
12 they have any preference?

13 MARIAN SIMULIK: I don't remember the
14 Federal Government entering the discussion. It
15 seemed to me it was all around what the Province
16 wanted, but they may have. I just don't recall.

17 LIZ McLELLAN: And what risks, if any,
18 were considered with the DBFM model?

19 MARIAN SIMULIK: What risks were
20 considered?

21 LIZ McLELLAN: Yes.

22 MARIAN SIMULIK: Well, one would
23 be -- and again, my focus is really around the
24 finance part, so you know, the
25 design/build/maintenance, I'll leave that to the

1 engineers.

2 On the finance side, it would be the
3 impact of the interest rate, when they went to set,
4 when they went to issue the debt, that they
5 wouldn't get the credit rating that they needed,
6 and so it was going to be more expensive. That was
7 really about it.

8 LIZ McLELLAN: And so what happened
9 with that in the end in terms of the credit rating
10 and interest rates and --

11 MARIAN SIMULIK: Well, it turned out
12 whatever they had bid and they had -- as part of
13 the RFQ, they had to identify sort of who was going
14 to be their short-term lenders and long-term
15 lenders and talk about what they had done in the
16 past around this.

17 And so -- and in the proposal, they
18 actually locked it down. The credit rating was
19 exactly as they had predicted it would be, and they
20 were able to secure the debt actually at the rate
21 that they said they were able to figure it out.

22 LIZ McLELLAN: So in terms of the
23 private financing, what determined the level of
24 financing and the amount of financing?

25 MARIAN SIMULIK: The 300 million?

1 LIZ McLELLAN: Yes.

2 MARIAN SIMULIK: That was the
3 discussions that we had with IO and Deloitte
4 setting -- and we had, as I said, we had initially
5 set it at 400 million as the maximum amount, but
6 then through the discussions with the commercially
7 confidential meetings with the three bidders that
8 changed and it was reduced to I think -- I think it
9 was a minimum of 250 million. And the winning bid
10 had 300 million, 75 million of that is equity and
11 225 as long-term debt.

12 So it was their determination as to how
13 much equity they would put in and how much
14 long-term debt. We just required there to be a
15 private sector component of debt of a minimum of
16 250 million, I think.

17 LIZ McLELLAN: And then who was
18 involved in advising the City on the delivery
19 model?

20 MARIAN SIMULIK: Infrastructure Ontario
21 was our advisor. They were the procurement agent
22 on this.

23 And then they worked closely with
24 Deloitte, so we worked with them as well on this.

25 LIZ McLELLAN: And what was the impact

1 of IO's involvement generally and then in your role
2 too?

3 MARIAN SIMULIK: They didn't -- my only
4 interaction with them really was as, you know, when
5 they were presenting to the steering committee, but
6 then was around the discussions about the value of
7 the long-term financing.

8 So I am really -- I didn't have a lot
9 of interaction with them, so I can't really tell
10 you what their role was. I know they were involved
11 in the procurement. They led the teams, the
12 evaluation teams for the RFQ and I think they led
13 the technical and the finance teams as well on the
14 RFP.

15 But their involvement is -- it was with
16 other people at the City, not so much with me.

17 LIZ McLELLAN: Okay. But in terms of
18 the Executive Steering Committee, most -- would you
19 say it is fair that most issues and a lot of the
20 oversight was done by the ESC on the project? So
21 in terms of, you know, if IO did have a proposal on
22 something, would it likely go to the ESC?

23 MARIAN SIMULIK: It would. It depends
24 on the nature, I guess, of the proposal. They were
25 the procurement lead, so you know, we were taking

1 their advice. If they wanted to do something I
2 guess completely radical or whatever -- I remember
3 more just reporting from them as to the progress,
4 not really, you know, decisions around, you know,
5 is it going to be 'x' or is it going to be 'y'.

6 LIZ McLELLAN: Okay, and then what was
7 IO's role during construction?

8 MARIAN SIMULIK: One of -- I know one
9 of Infrastructure Ontario's members sat on the
10 executive, was a member of the Executive Steering
11 Committee, so they were receiving their reports
12 with everyone else around how the progress was
13 going, but I am not certain what it was with --
14 what their involvement was with the rest of -- with
15 RIO, for example, or transit.

16 LIZ McLELLAN: And who was it from IO
17 that was on the ESC?

18 MARIAN SIMULIK: His first name was
19 Derek.

20 LIZ McLELLAN: Okay.

21 MARIAN SIMULIK: And I'm sorry, I don't
22 know what his last name is. That has completely
23 escaped me.

24 LIZ McLELLAN: No, I understand. It
25 was awhile ago.

1 MARIAN SIMULIK: It starts with a "T",
2 I think.

3 LIZ McLELLAN: And then after the City
4 consulted -- after, did the City consult with IO
5 about potential issues or disputes that arose with
6 RTG?

7 MARIAN SIMULIK: Well, any disputes
8 that would have arisen with RTG would have gone to
9 the Executive Steering Committee and they would
10 have been as part of that discussion. I don't know
11 if they were discussed beforehand or whatever. I
12 just know that Derek would have been on the
13 committee, or whoever it was from IO, and they
14 would have heard the discussions about any
15 disputes.

16 LIZ McLELLAN: Because I think -- are
17 you familiar with an MOU between the City and IO?

18 MARIAN SIMULIK: The first one that was
19 signed for Stage 1?

20 LIZ McLELLAN: The 2011 one.

21 MARIAN SIMULIK: Yes, I am.

22 LIZ McLELLAN: And there was a clause
23 in there I think to do with dispute resolution and
24 the City would consult with IO about disputes. So
25 I am just wondering about the mechanism and how

1 that happened.

2 MARIAN SIMULIK: Okay, so I wouldn't
3 know too much about that. I was more or less
4 concerned about what they had in there about the
5 financing. Again, I sort of sticking to my
6 knitting and it is more or less about finance for
7 me.

8 LIZ McLELLAN: And was the budget
9 revisited after the selection of the DBFM model?

10 MARIAN SIMULIK: Was the budget
11 revisited? The DBFM model was actually established
12 I think at the same time as they did in 2010, the
13 2.1 billion, which was then set as a target.

14 So already it was, the model -- or the
15 delivery model was already known at the time the
16 2.1 billion was set as a target. So no, there was
17 no re-evaluation. There was discussion there
18 certainly, because those financing costs were
19 something that were not anticipated in the
20 beginning, and then how to absorb that within the
21 overall budget.

22 LIZ McLELLAN: Okay, and just generally
23 what was Boxfish's role?

24 MARIAN SIMULIK: They worked for the
25 Rail Implementation Office as an advisor. I don't

1 know if they worked for the City Manager's office,
2 but it was looking at the overall design. They are
3 the ones who basically came up with the realignment
4 and other issues.

5 So it was -- they were Technical
6 Advisors to RIO, and I am assuming as a result then
7 they would report -- they would attend some of the
8 Executive Steering Committee meetings to present on
9 items.

10 LIZ McLELLAN: And then who was it
11 typically who would present from Boxfish to the
12 ESC?

13 MARIAN SIMULIK: Typically it was Brian
14 Guest.

15 LIZ McLELLAN: Okay. And then what
16 role did Boxfish have during construction?

17 MARIAN SIMULIK: During construction?
18 I am not aware that they had any role during
19 construction until we came to some of the disputes.

20 LIZ McLELLAN: Okay.

21 MARIAN SIMULIK: And then I think they
22 were retained again to come in, given their
23 experience with all the other rail lines that they
24 had been involved with, to provide advice and
25 guidance on how to deal with the disputes.

1 LIZ McLELLAN: So what was the nature
2 of their role in terms of advising on the disputes
3 from what you can recall? Because would they have
4 made presentations to the ESC, for example, on the
5 nature of the disputes and their recommendations?

6 MARIAN SIMULIK: In conjunction with
7 John Manconi and the RIO office, yeah, they would
8 have been there as part of the presentations. I
9 don't -- I am assuming they did some themselves,
10 but I don't recall.

11 LIZ McLELLAN: And can you think of any
12 value beyond the other advisors that the City had
13 that Boxfish added?

14 MARIAN SIMULIK: Well, they had
15 extensive experience dealing with these types of
16 large projects and the dispute mechanisms on them.
17 Boxfish was also involved in developing the whole
18 RFP and the Project Agreement, so Brian had
19 extensive knowledge on how it was to operate. And
20 so that was very valuable.

21 LIZ McLELLAN: I'll let Ms. McGrann
22 step in if she has any questions.

23 KATE McGRANN: Not at this time. I'll
24 turn my camera on if and when I have any
25 follow-ups.

1 LIZ McLELLAN: All right, perfect.

2 Maybe now is time for a good break --

3 MARIAN SIMULIK: Okay.

4 LIZ McLELLAN: Or maybe now is a good
5 time, if you are comfortable with that, Ms. Simulik
6 and Madam Reporter, or if you want to keep going
7 for a bit more.

8 MARIAN SIMULIK: Do you know how long
9 we'll be?

10 LIZ McLELLAN: I don't. We have until
11 5:00 p.m., but we have been going for roughly an
12 hour and 15 minutes, so --

13 MARIAN SIMULIK: Okay, let's take a
14 break.

15 LIZ McLELLAN: We can keep going if you
16 prefer?

17 MARIAN SIMULIK: Let's take a break
18 then. How long do you --

19 LIZ McLELLAN: How is five minutes?

20 MARIAN SIMULIK: Okay, five minutes,
21 sounds good.

22 PETER WARDLE: Can we make it a little
23 longer than five minutes.

24 LIZ McLELLAN: Sure, do you want to do
25 25?

1 PETER WARDLE: No, no, why don't we do
2 10 or 15 minutes, is that okay?

3 LIZ McLELLAN: So do you want to do
4 3:30?

5 PETER WARDLE: Sure.

6 MARIAN SIMULIK: 3:30, okay, thank you.

7 LIZ McLELLAN: Perfect.

8 -- RECESSED AT 3:16 P.M.

9 -- RESUMED AT 3:28 P.M.

10 LIZ McLELLAN: So, Ms. Simulik, just to
11 finish up where we were, so was there any analysis
12 done on which of the delivery options would
13 maximize the City's operational flexibility over
14 the long term and did any of them count for future
15 system expansion?

16 MARIAN SIMULIK: Did any of the DBFM
17 models look at operational flexibility from the
18 City?

19 LIZ McLELLAN: Any of the models, yes.

20 MARIAN SIMULIK: I don't remember that
21 as being part of any analysis, but again, this -- I
22 was really only concerned about the "F" part of it.
23 The engineers and the transit people were concerned
24 about the other three parts of the delivery model.
25 So they may have.

1 LIZ McLELLAN: Yes, okay, so in around
2 March 2011, I understand that FEDCO directed staff
3 to explore opportunities to accelerate the project
4 and the project timeline.

5 MARIAN SIMULIK: Okay, correct.

6 LIZ McLELLAN: And then so can you
7 explain why? Like what were the circumstances
8 around this direction?

9 MARIAN SIMULIK: I think the concern
10 was that the City was growing quite rapidly and the
11 existing rapid transit, bus rapid transit system,
12 because it had to go through the downtown, which
13 was such a bottleneck, it was getting to the point
14 of failure. We were having -- if there was ever an
15 issue on any of the streets that were used for bus
16 rapid transit, you would have -- and we could see
17 it from City Hall, you could have 40, 50 buses in a
18 row lined up on Rideau Street at the end of the day
19 because they couldn't get through.

20 So in order to alleviate those concerns
21 as quick as possible, it was decided I think to
22 accelerate it. There may have been other reasons,
23 but that is the one I am familiar with.

24 LIZ McLELLAN: And were any of those
25 other reasons discussed with you, or that was the

1 only reason, was the downtown congestion that was
2 discussed with you?

3 MARIAN SIMULIK: And that really
4 actually wasn't even discussed with me. That is
5 only what I remember. Again, I am the recipient of
6 the number and I have to work it into the finance
7 model. I am not the decider of, you know, what are
8 the issues that the City is facing from a
9 transportation perspective.

10 LIZ McLELLAN: But then how would you
11 have received the direction on the numbers from,
12 say, FEDCO? Like what would the process be on
13 that?

14 MARIAN SIMULIK: Well, the
15 initial -- so starting with the environmental
16 assessment that was done initially, and it came up
17 with a number. And then we included that number in
18 our analysis. And then they went and further
19 refined it and brought it to the 2.1. And again,
20 that number is relayed to us, and we include it in
21 our analysis.

22 So it is always the engineers and the
23 transportation planning people are coming up with
24 their estimates and providing those to us. They
25 are feeding that information into us to make

1 certain we are capturing it correctly in our
2 overall financial model.

3 LIZ McLELLAN: Okay. So I mean, like
4 FEDCO meets and then they would make certain
5 decisions, or would it be that you would have a
6 report that would go to FEDCO from your office
7 authored, you know, in your name, and then there
8 would be recommendations? Or how would the
9 information flow from FEDCO to your office?

10 MARIAN SIMULIK: Okay. So yes, FEDCO
11 doesn't make decisions in a vacuum.

12 LIZ McLELLAN: Right.

13 MARIAN SIMULIK: The City staff provide
14 them with a report and with recommendations. So I
15 provided FEDCO with my analysis on the City's
16 financial capacity with respect to light rail, and
17 that -- there were no decisions in that because
18 that was just reporting out to them. It was there
19 to support their decision about whether to proceed
20 with the \$2.1 billion project.

21 So we prepare work. It goes to the
22 committee. There may be recommendations, as there
23 were in that report in 2010. And then we proceed
24 from there.

25 LIZ McLELLAN: But who initially would

1 come to you and say, Okay, FEDCO would like staff
2 to look at accelerating the schedule. What are the
3 financial implications?

4 MARIAN SIMULIK: I would have heard
5 that from the -- I guess Nancy Schepers would have
6 been the head of infrastructure and planning at
7 that time, so she would have been having
8 discussions with either the elected reps or with I
9 don't know who, the Mayor's Office maybe, and then
10 the decision would be made that we are going to
11 have a report go forward to ask for it to be
12 accelerated and then I would be told -- at that
13 time that there was no number. It was just -- it
14 was the same number as before.

15 And then I get fed the information once
16 they finish their analysis.

17 LIZ McLELLAN: And then in terms of
18 reporting to FEDCO, did you ever attend at FEDCO
19 meetings to give presentations on your reports or
20 projections?

21 MARIAN SIMULIK: All the time.

22 LIZ McLELLAN: And would you receive
23 questions from Council?

24 MARIAN SIMULIK: All the time.

25 LIZ McLELLAN: And so what was the

1 discussion like around the -- around your report
2 and its findings on the acceleration of the
3 schedule?

4 MARIAN SIMULIK: There wasn't -- that
5 wasn't a finance report. So that would have
6 been -- I believe that was a report coming from
7 Nancy Schepers' office, the infrastructure and
8 planning, so she would have been presenting and she
9 would have been having the discussion with them.

10 My part of it or my department's part
11 of it is there is a finance comment at the bottom
12 or at the end of every report, and it basically
13 would have -- and if I remember correctly, that one
14 said, you know, you can -- we have already provided
15 you with an analysis to show that you have the
16 financial capacity to undertake this project.

17 That is really my job is to let them
18 know about the financial side of it. And at that
19 time, because it is not a real project, it is
20 just -- it is an idea, there is no real detail
21 about the financing, other than what I had provided
22 them with both in a memo and then later on in the
23 long-range financial plans.

24 And the long-range financial plans are
25 at a very high level. They are not down to, you

1 know, nickels and cents. We are talking we are
2 rounding up to ten millions of dollars.

3 LIZ McLELLAN: But if there was sort of
4 a note at the end of the report saying that like
5 you had reviewed it and your assumptions were built
6 in, did you still attend, even though maybe Nancy
7 Schepers was leading the briefing?

8 MARIAN SIMULIK: Yes, I would have
9 been -- I attend all FEDCO meetings because that is
10 where finance reports to, so I attend all of those
11 meetings and if there are any finance questions,
12 they get referred to me.

13 So if there had been -- when Nancy did
14 her presentation, if there had been a finance
15 question, she most likely would have turned it over
16 to me.

17 LIZ McLELLAN: Okay, so Nancy Schepers
18 is taking the lead, and then you would answer
19 questions, but do you recall specifically on the
20 issue of the acceleration of the project if you
21 were asked any questions or if you had received any
22 comments from FEDCO?

23 MARIAN SIMULIK: No, I don't remember.

24 LIZ McLELLAN: Okay, generally, and
25 this is a very general question, but in terms of

1 those meetings that you attended let's say from
2 2010 until 2019, generally would you attend and
3 discuss the circumstances of the finances around
4 the project?

5 MARIAN SIMULIK: FEDCO can only discuss
6 what is on the agenda.

7 LIZ McLELLAN: Right.

8 MARIAN SIMULIK: They can make general
9 inquiries at the end, but the progress on this
10 particular project was a regular -- I think they
11 came once a month to report to FEDCO, to update
12 them on the progress.

13 And if there were -- and so in that
14 presentation, then they could ask questions, if
15 they had any, about the financials. There weren't
16 too many until we got to the issues of substantial
17 completion and revenue service availability.

18 LIZ McLELLAN: Okay, and we'll be
19 getting to those areas, so we'll discuss those
20 meetings then.

21 So in terms of the long-term private
22 financing component and initially, so what
23 advice -- did IO provide any advice about the
24 amount of long-term private financing and Deloitte?
25 I believe you said that they did, and they

1 suggested \$1 billion?

2 MARIAN SIMULIK: That was their
3 starting point, so they modelled all kinds of
4 different scenarios for us. And it ultimately was
5 a City decision, so I believe it was
6 Mr. Kirkpatrick and myself who felt comfortable
7 with the analysis that they provided that we would
8 go up to \$400 million.

9 LIZ McLELLAN: And then the factor --
10 and I don't want to presuppose what your answer
11 will be, but I think we discussed it, but what were
12 the factors that were instrumental in the City's
13 decision about the amount?

14 MARIAN SIMULIK: About the amount? It
15 was really the amount of risk we saw that we needed
16 to transfer over and we had to have more or less an
17 offset for it, and then really the -- equal to cost
18 to the City.

19 LIZ McLELLAN: And so what was the
20 spectrum of the amounts recommended? So was it
21 kind of up to 1 billion and then what was the base?

22 MARIAN SIMULIK: If I remember -- I
23 remember the billion and I remember telling
24 them -- because a billion was way more than the
25 risk that we were -- so they -- I think they took

1 it down to 700 and they may have taken it to 350 or
2 something like that.

3 Honestly, I don't remember the actual,
4 but they provided multiple scenarios for us.

5 LIZ McLELLAN: But then the City goes
6 with 250, which I guess is \$100 million lower than
7 IO's recommended base?

8 MARIAN SIMULIK: No, we initially set
9 it at 400 million was the very first.

10 LIZ McLELLAN: Right.

11 MARIAN SIMULIK: Up to 400 million.
12 But then in discussions with the three proponents
13 who were bidding and looking at trying to find ways
14 to allow them to come in and at the affordable
15 level, the decision was made -- they were all
16 saying reduce the amount, allow us to have less
17 than that. And so that is when the decision was
18 made to reduce it.

19 Now at that time as well the risk may
20 have also dropped because at that time we were also
21 dealing with a shallower tunnel and with a
22 realigned route.

23 LIZ McLELLAN: You said that the three
24 bidders were asking to have less than \$400 million
25 for long-term financing?

1 MARIAN SIMULIK: Well, we were working
2 with them to find out what would be the best level,
3 and that is -- they were saying, you know, if you
4 want us to come in under affordability, then change
5 this amount. So with looking at what they were
6 requesting and what was the risk, it was felt that
7 that was a reasonable approach.

8 LIZ McLELLAN: Okay. And then at the
9 time, did you feel that that was a reasonable
10 approach, or what was your assessment of that
11 position?

12 MARIAN SIMULIK: It was -- because it
13 wasn't set as a ceiling. It was set as a floor.
14 So the 250 was what they had to have as a minimum,
15 so they could go above it. If they wanted to go to
16 400 million, they could have, if they could have
17 found a way to make it work within the
18 affordability cap.

19 LIZ McLELLAN: Would that have affected
20 the City's scoring of the proponent if they did say
21 like I want to go up to 400 million and then
22 another proponent said we are good with 250, or how
23 would that have impacted?

24 MARIAN SIMULIK: I don't believe that
25 would have been a decision other than the more

1 private sector debt you have in there, the higher
2 the cost, which means your net present value is
3 going to be higher. So they knew how -- that in
4 fact it was the back end that had to be -- they had
5 to try to reduce that to get the NPV lower.

6 So no, it wouldn't have made a
7 difference in how they were scored. They were all
8 scored exactly using the same methodology then.

9 And I can't tell you whether it would
10 have had an impact because they could have done
11 something else in another area which would have
12 brought them within the affordability.

13 LIZ McLELLAN: Okay. In terms of
14 reporting to the Provincial and Federal Government
15 on the status of the project and the budget, how
16 were you involved in that, if at all?

17 MARIAN SIMULIK: On the status of the
18 City's budget?

19 LIZ McLELLAN: On the status of the
20 project budget and their -- so the Provincial
21 Government and Federal Government give their fixed
22 amounts, but did the City have to report to the
23 Provincial and the Federal Governments on the
24 progress of the budget?

25 MARIAN SIMULIK: On the progress of the

1 project, yes, because they did not give us 600
2 million. They only gave us as we presented
3 invoices, as we presented milestones. So we didn't
4 have the money until the work was done.

5 So there was a whole process in place
6 when a milestone was met to actually -- because we,
7 the City, would have to pay the contractor RTG the
8 amount that was due, I think it was within five
9 days, but then we had to submit it to both the
10 Federal and the Provincial Governments and then
11 they would go through their review process and then
12 eventually they would pay the City their share of
13 that particular invoice.

14 So we were front-ending all of
15 their -- all of the payments for the Federal and
16 Provincial Governments.

17 LIZ McLELLAN: So would you walk us
18 through that a little bit more. So what were the
19 different milestones and then typically like would
20 the Province or Federal Government ever look at the
21 invoices and say that is too much? What was --

22 MARIAN SIMULIK: Okay, so the
23 milestones were set in the contract and the
24 amounts, so there were I believe twelve of them,
25 and that included revenue service availability and

1 substantial completion as being milestones.

2 But the rest of them, they got to pick
3 what the milestones were and that was another one
4 of the changes that we made because of the
5 commercially confidential meetings, was that
6 initially we had said, you know, no milestone could
7 be less than 50 million, and they said, No, no,
8 allow us to have it less than that.

9 So they selected the milestones they
10 wanted, except for there were a couple that they
11 didn't have a say in, but everything else was they
12 selected them and they were set in the contract.
13 So when you got to your very first milestone, and I
14 don't even remember what it was but it was a big
15 one, we had to -- they would send us the invoice
16 and we had an Independent Certifier or engineer and
17 he would go through it and verify that in fact it
18 had met the definition of what that milestone was
19 as per the Project Agreement.

20 And then once he had certified that, he
21 would send it over to us and we had five days to
22 pay RTG, so -- and the dates were established in
23 the Project Agreement as well.

24 We would then -- even though we had an
25 independent engineer, we would then have to send it

1 to the Federal Government and the Provincial
2 Government and they would have their independent
3 engineers go over what our independent engineer had
4 done, and then they would send it to some committee
5 or do whatever, I don't know, they took forever it
6 seemed like to send us the money. So we would pay
7 them, say, on the 5th of July and maybe by the 25th
8 of July we would get the share that the Federal
9 Government and Provincial Government said that they
10 were going to pay of that particular invoice.

11 So it was all set out beforehand, but
12 they did a review of everything, a re-review, I
13 should say, of everything that was reviewed at the
14 City as part of our process.

15 LIZ McLELLAN: And how did the
16 milestones match up with the milestones that RTG
17 would have had with -- say like obviously the RSA,
18 so when RTG didn't meet the initial RSA date, then
19 was the City implicated financially in terms of
20 receiving funding from the Federal and Provincial
21 Governments because of that?

22 MARIAN SIMULIK: No, because they
23 hadn't sent us anything. They never -- they didn't
24 send us in advance. So when we would have got to
25 revenue service availability, we would have

1 actually had to have sent an invoice to both the
2 Feds and the province to let us -- so that they
3 could be in their process to pay us, so no, there
4 was --

5 LIZ McLELLAN: So you would have
6 actually paid it out and you would have --

7 MARIAN SIMULIK: Exactly, we acted as
8 the bank for the Federal and the Provincial
9 Governments.

10 LIZ McLELLAN: Okay.

11 MARIAN SIMULIK: We paid RTG and then
12 they reimbursed us.

13 LIZ McLELLAN: Okay.

14 [Court Reporter intervenes
15 for clarification.]

16 LIZ McLELLAN: So I think it would have
17 just been -- I think I would have just said that
18 around RSA, because there weren't any funds being
19 paid out at that time because they had missed it,
20 it wouldn't have necessarily affected the City's
21 position because the City wouldn't have had to pay
22 anything out, and then they would therefore not
23 have to invoice the Provincial and Federal
24 Governments. I think that is what I said.

25 [Court Reporter intervenes for

1 clarification.]

2 LIZ McLELLAN: How was the selection of
3 RTG determined?

4 MARIAN SIMULIK: So the RFP had a whole
5 process outlined as to what they had to submit and
6 then it went through -- there was a technical
7 evaluation. There was an initial assessment for
8 completeness and a technical evaluation team and a
9 financial evaluation team and they went through the
10 process.

11 And basically -- and RTG won on both
12 the technical side and on the financial side.

13 LIZ McLELLAN: And then as a member of
14 the ESC, what information did you receive about the
15 selection of RTG?

16 MARIAN SIMULIK: We received a
17 presentation on the whole process, on how they had
18 gone through it and how they had scored. And then
19 something about RTG itself, some information on
20 that particular -- on those companies, because we
21 were not familiar with them, so we would have
22 received that. And they would have asked, I
23 believe, us to endorse that as the Preferred
24 Proponent.

25 LIZ McLELLAN: And at the time what

1 were your general -- what was your general
2 assessment of RTG being selected as the Preferred
3 Proponent?

4 MARIAN SIMULIK: I had no thoughts
5 about it one way or the other. I don't know
6 these -- I don't know construction companies, so
7 they could have been jack-in-a-box for all I know.

8 LIZ McLELLAN: And then did --
9 throughout the process and after they were
10 selected, did RTG provide any feedback on the
11 sufficiency of the budget?

12 MARIAN SIMULIK: It was a fixed price.
13 So if they had problems with the fixed price, then
14 they should have bid higher. So I didn't hear
15 anything about them saying -- they never told me
16 that they thought the budget was insufficient.
17 They had bid on a fixed price, and they stuck to
18 it.

19 LIZ McLELLAN: Okay. And then so back
20 to milestone payments but with RTG, so how were the
21 milestone payments initially identified?

22 MARIAN SIMULIK: I believe in the RFP
23 process they were able to set their own what they
24 thought the milestones would be, the number of them
25 and what the types were.

1 The only ones I believe the City
2 insisted upon was the 2017 readiness milestone
3 because 2017 being the sesquicentennial, it was
4 important that the downtown not look like a
5 construction site. So that was a requirement to
6 the City that that one -- and there was a milestone
7 for meeting that.

8 But everything else was set my
9 understanding was the choice of the proponent's.

10 LIZ McLELLAN: And who was involved in
11 the activity of setting the milestones?

12 MARIAN SIMULIK: I can't tell you. I
13 just was -- found out what they were when I was
14 told who the winning proponent was and these are
15 the milestones that they selected. I am not
16 certain how those were -- who was involved in the
17 setting of those.

18 LIZ McLELLAN: And from your
19 understanding, what was the purpose of the
20 milestone payments?

21 MARIAN SIMULIK: The purpose of the
22 milestone payments was basically to provide them
23 with funding to continue on the work, but also to
24 pay them for -- not for the work that had been done
25 up to that date, but when they reached something

1 that was predefined. So they got to a certain --
2 you know, the completion of the tunnel I believe
3 was one of the milestone payments.

4 So it was their determination as to how
5 they -- how and when they wanted to be paid as
6 per -- but they had to be defined. You had to have
7 done, you know, half of the stations have to be
8 ready or whatever it was. That is how they were
9 selected.

10 LIZ McLELLAN: And from what you
11 understood, were they there to incite achievement
12 of significant phases of the project?

13 MARIAN SIMULIK: They could have been.
14 I don't know enough about engineering and the whole
15 sort of construction to tell you that those look
16 like good construction milestones. They were just
17 payments to me, quite frankly.

18 LIZ McLELLAN: Okay. What was your
19 involvement with changes made to the milestone
20 payments during construction?

21 MARIAN SIMULIK: There weren't many,
22 but I do remember there being one early one and it
23 had to do -- and it was the way the milestone was
24 defined. And I think it had to do with -- the
25 milestone might have been that it was tons of rock

1 extracted. They had to have so many tons of rock,
2 but instead they went further. They did distance
3 as opposed to volume.

4 And when there was a change in the
5 milestone and they requested that this milestone be
6 changed because it was in -- as they had said, it
7 was on the critical path, then we would have to go
8 to both the Province and the Feds to get their
9 agreement that this was -- if we agreed with
10 changing the milestone, go to them to get their
11 agreement that it could be changed as well, and so
12 we were able to do that in that particular case.
13 We were able to adjust the definition of the
14 milestone and make the payment.

15 LIZ McLELLAN: And so then who was
16 involved in negotiating the changes?

17 MARIAN SIMULIK: To the milestones?

18 LIZ McLELLAN: Uhm-hmm, to the
19 payments.

20 MARIAN SIMULIK: No, the payments
21 weren't changed, just the definition of the
22 milestone.

23 LIZ McLELLAN: All right.

24 MARIAN SIMULIK: So if it was 65
25 million, it didn't -- that didn't change. It was

1 just what did you achieve to get that \$65 million.

2 LIZ McLELLAN: So who was involved in
3 that?

4 MARIAN SIMULIK: In changing the
5 definition? It would have been the RIO office and
6 that I don't know who else would have been
7 involved.

8 LIZ McLELLAN: Are you familiar with IO
9 being involved, other levels of government, or you
10 are just familiar with RIO?

11 MARIAN SIMULIK: Well, the other levels
12 of government had to be involved because any change
13 to the milestones had to be approved by both the
14 Federal and Provincial Government. IO may have
15 been involved. I am not certain.

16 LIZ McLELLAN: Okay. Did the City ever
17 receive any advice to refrain from making the
18 changes?

19 MARIAN SIMULIK: Refrain from making
20 the changes? I don't remember any advice to not
21 make the change. It was a request being made by
22 RTG, who was our partner, and we saw it as
23 reasonable. I don't recall.

24 LIZ McLELLAN: And in terms of passing
25 seen as reasonable, what other reasons did the City

1 have to become comfortable with making the changes?

2 MARIAN SIMULIK: It was on the critical
3 path, so that was important. We were more
4 concerned about them achieving the end result than
5 the little -- than the milestones in between, and
6 everything that is on the critical path should
7 theoretically be a milestone.

8 LIZ McLELLAN: And were any payments
9 made for work that had not yet been completed?

10 MARIAN SIMULIK: The milestones, the
11 way they were defined, if they met that milestone,
12 they -- so the work had to have been completed in
13 order to meet the milestones, so I would have to
14 say no to that.

15 LIZ McLELLAN: Did the changes to
16 specific milestones change the overall role of
17 milestones as an incentive for RTG on the project,
18 in your view?

19 MARIAN SIMULIK: No, because this was I
20 think the only milestone that actually changed, so
21 no. As an incentive, no. They were still -- they
22 had revenue service and substantial completion were
23 still set dates that they were supposed to achieve,
24 so no.

25 LIZ McLELLAN: And was there any

1 assessment of the operation of the milestones
2 following construction?

3 MARIAN SIMULIK: There was an
4 evaluation, sort of a lessons learned document that
5 was prepared later, and I think it referenced the
6 fact that milestones need to be on the critical
7 path. But that is -- I don't recall any other
8 assessment.

9 LIZ McLELLAN: So were there any
10 changes to the approach in milestone payments in
11 Stage 2 as a result of Stage 1?

12 MARIAN SIMULIK: I do not know. I
13 don't think so.

14 LIZ McLELLAN: In your view, were the
15 milestone payments effective?

16 MARIAN SIMULIK: I would have to say
17 they were, until we basically got to the issue of
18 the collapse on Rideau Street and then -- because
19 they were meeting all of their deadlines and
20 milestones before that, and then all of a sudden
21 they had one thing that didn't happen or caused a
22 problem, and then everything else started to get
23 backed up as a result of that.

24 So that is about it.

25 LIZ McLELLAN: And in terms of

1 milestone payments versus an earned value approach,
2 was an earned value approach ever considered as a
3 potential payment approach?

4 MARIAN SIMULIK: I know there were
5 discussions about it because there was some
6 differences in accounting for the Provincial side
7 versus the Municipal side and it was something to
8 the effect that they were doing it on an earned
9 value approach.

10 But if there were discussions about it,
11 I was not privy to them. They would most likely
12 have taken place with Ms. Monkman and as part of
13 her role.

14 LIZ McLELLAN: Okay. And then prior to
15 the close of the Project Agreement, other than the
16 provisions of the agreement, did the City make any
17 plans to account for the possibility of late
18 delivery?

19 MARIAN SIMULIK: Did we make plans for
20 late delivery? Not in 2012.

21 LIZ McLELLAN: Okay. And who was
22 involved in that planning if there was planning
23 later?

24 MARIAN SIMULIK: The planning later was
25 all done by Mr. Manconi because he had to keep his

1 bus service running longer than he had expected to
2 and all of that entailed with the rerouting and
3 keeping drivers and so on.

4 So a lot of that planning was his, but
5 also there would have been -- at that point in time
6 Mr. Kanellakos would have been involved, as sort of
7 the how we were going to deal with this from a
8 public perspective and a political perspective when
9 they didn't meet their milestones, the substantial
10 completion and revenue service availability.

11 LIZ McLELLAN: And how was risk
12 allocated in the context of delays in the financing
13 plan that was being built around the project
14 schedule?

15 MARIAN SIMULIK: So the Risk Register
16 actually had identified some of these, so there
17 were values put against them and so they were
18 assessed in that perspective and we looked to the
19 contingency and what was available within the
20 contingency to keep this going and what were the
21 other mechanisms we had as well, because this
22 was -- they were responsible for the -- under the
23 transportation matters clauses of the Project
24 Agreement, they were penalized when they said they
25 needed a road closed for so long and then it was

1 closed for longer than that, or they had a site
2 that they were renting and all of a sudden they
3 needed to rent the site for longer.

4 So we looked at what was in the Project
5 Agreement to recover the extra costs. So all of
6 that planning would have been done through
7 Mr. Kanellakos and Mr. Manconi and the Executive
8 Steering Committee.

9 LIZ McLELLAN: So then on the road
10 closure issue, are you referring to the mobility
11 matters amount holdback?

12 MARIAN SIMULIK: Oh, I called it
13 transportation. I'm sorry, it is mobility matters,
14 yes.

15 LIZ McLELLAN: Okay. So are you aware
16 of the circumstances around that holdback placed on
17 the mobility matters? I think it is a delay, and
18 it involved in the result of delays, then there is
19 the holdback, is what I understand.

20 MARIAN SIMULIK: That is my
21 understanding as well is that it has got -- they
22 defined as part of the project that this particular
23 road needs to be closed or needs -- buses need to
24 run on it, for example, for a certain length of
25 time, which was sort of all built around what their

1 project schedule was.

2 And then if they exceeded that, then
3 there were penalties that would apply.

4 KATE McGRANN: And were you part of the
5 decision-making process to hold that money back?

6 MARIAN SIMULIK: Yes, I was.

7 LIZ McLELLAN: And what were the
8 circumstances around that decision-making process?

9 MARIAN SIMULIK: We were enforcing a
10 Project Agreement that was ultimately what we were
11 doing. We had mechanisms within the Project
12 Agreement to recover some of the costs, because we
13 had additional costs as a result of all of the
14 delays. So the project had mechanisms and we
15 utilized them.

16 LIZ McLELLAN: So if there was a delay
17 or an issue with RTG's performance, was the City's
18 practice to go to the Project Agreement to
19 determine like if there was a remedy?

20 MARIAN SIMULIK: Yes, first and
21 foremost, that was -- we were trying to follow or
22 following the Project Agreement as closely as
23 possible.

24 LIZ McLELLAN: And do you remember or
25 recall the amount that was held back as a result of

1 the delay and invoking the mobility matters
2 schedule?

3 MARIAN SIMULIK: No, I'm sorry, I
4 don't. I think it was taken off the final payment,
5 but the revenue service availability payment, but I
6 don't remember the amount. It could have been off
7 substantial completion as well. It is sort of
8 vague for me.

9 LIZ McLELLAN: And do you remember who
10 was involved in that decision?

11 MARIAN SIMULIK: It was the Executive
12 Steering Committee. We discussed this is what the
13 payment is and this is as per the Project
14 Agreement. So there was even I think it was a
15 million bucks every time that they didn't meet
16 revenue service availability, that was taken off,
17 and anything else that was in the Project Agreement
18 as per -- as defined in there.

19 LIZ McLELLAN: And would you report to
20 FEDCO on those reductions based on delays or
21 whatever remedies were available in the Project
22 Agreement?

23 MARIAN SIMULIK: I believe those were
24 reported, yes, when -- at that point in time
25 Council and FEDCO were very interested in what was

1 being paid out to RTG.

2 And so they would have been informed as
3 to the deductions that were made from the payment
4 to them.

5 LIZ McLELLAN: And so obviously the
6 Mayor who was sitting on FEDCO would have been
7 aware of those deductions as well?

8 MARIAN SIMULIK: I believe so.

9 LIZ McLELLAN: And do you recall any of
10 the feedback from the members of FEDCO on the
11 City's decision to invoke different schedules of
12 the Project Agreement to make those deductions?

13 MARIAN SIMULIK: There was a desire
14 from Council to actually hold back -- or FEDCO to
15 hold back more, but we were privy -- we were
16 telling them that the Project Agreement had to be
17 adhered to. And so these were the mechanisms in
18 the Project Agreement, and so that was the limit we
19 could do and they would put themselves at risk if
20 in fact they veered from it and decided to do
21 something punitive.

22 LIZ McLELLAN: Once construction was
23 underway, prior to being advised that the RSA
24 deadline would not be met, what steps or plans were
25 made in terms of milestone payments and payments?

1 MARIAN SIMULIK: No change to the
2 payments. The milestones, we were adhering to what
3 the contract said. So revenue service availability
4 was defined in there, and they had to provide
5 evidence that they were able to hand it over to us.

6 And so nothing changed from a milestone
7 or a payment perspective. We were just adhering to
8 what was in the contract.

9 LIZ McLELLAN: And so was that always
10 the approach of the City, that you would always be
11 relying collectively on the Project Agreement and
12 there wasn't a lot of leeway necessarily?

13 MARIAN SIMULIK: That is the approach
14 that was being taken, yes.

15 LIZ McLELLAN: And who was responsible
16 for dictating that approach?

17 MARIAN SIMULIK: That was I would say a
18 joint decision by the Executive Steering Committee.
19 Certainly Mr. Manconi and his legal advisors were
20 telling us that we would weaken our position in
21 future issues if we did not actually stick to how
22 the Project Agreement -- the remedies that were
23 laid out in it.

24 LIZ McLELLAN: So staying away from any
25 legal advice, in terms of the ESC, what were the

1 discussions there on strictly adhering to the
2 Project Agreement?

3 R/F PETER WARDLE: Well, I think, just if
4 you don't mind, just for a moment, Ms. Simulik, you
5 know, I know -- and we have had this discussion
6 with other witnesses, I know that legal advice was
7 being provided to the ESC and both by the City
8 Solicitor and by external Counsel.

9 So I don't want Ms. Simulik repeating
10 discussions that took place that involved external
11 Counsel.

12 LIZ McLELLAN: All right.

13 PETER WARDLE: So I have been kind of
14 letting you go, because you have been very careful,
15 thank you, to skirt around privilege, but I think
16 you are now getting into an area that is sort of
17 directly covered by privilege.

18 LIZ McLELLAN: Okay. So once it became
19 clear that the RSA deadline would be missed, what
20 steps or what plans were made in terms of --

21 MARIAN SIMULIK: At that time? So then
22 the issue became how to communicate the fact that
23 they were going to miss the RSA date, what were we
24 going to do about it, could we give Council any
25 assurance when they were going to make it, and then

1 the next step became, okay, because they had
2 already let -- gave notices to the bus drivers that
3 were to be let go, how do we retract that? Like
4 how do we keep service running because they haven't
5 met the date?

6 So it became very operational, so it
7 was sort of Mr. Manconi and his group dealing with
8 the fall-out of it, and then the Executive Steering
9 Committee and Mr. Kanellakos dealing with the how
10 do we present this to the politicians to let them
11 know and the public to let them know that they have
12 to continue with the detours.

13 LIZ McLELLAN: And then financially
14 what were the implications when an RSA date was not
15 met?

16 MARIAN SIMULIK: The only financial
17 implications revolved around extending the cost for
18 keeping the bus service, the detours in place, so
19 it was how do we fund that, is there remedies to
20 look at the Project Agreement that could cover some
21 of the costs of having all of these additional bus
22 drivers in place longer than we had anticipated.

23 So it became a bit of an accounting
24 exercise, you know, where we don't have to make a
25 payment for maintenance, you know, in this period,

1 but we have all these other costs associated with
2 keeping the bus operations going. So it became a
3 little bit of an accounting exercise to say how do
4 we cover those costs.

5 LIZ McLELLAN: And then what about
6 financial penalties.

7 MARIAN SIMULIK: Financial penalties
8 for RTG?

9 LIZ McLELLAN: For missing the RSA
10 date, yes.

11 MARIAN SIMULIK: That was RTG's
12 concern, not ours. If they had financial penalties
13 from their long-term lenders, and I don't believe
14 they did, the short-term lenders would be paid out
15 I think from revenue service availability, so the
16 short-term lenders were the ones who were more
17 concerned, I think.

18 But that was part of their
19 arrangements, not -- it wasn't anything the City
20 dealt with.

21 LIZ McLELLAN: I believe, though, in
22 the Project Agreement there is the required RSA
23 date of May 24, 2018, and then there were some
24 financial penalties that could have been invoked.

25 MARIAN SIMULIK: Oh, I'm sorry, I'm

1 sorry, I misunderstood what you were asking about.

2 LIZ McLELLAN: Right.

3 MARIAN SIMULIK: That is the million
4 dollars, I think --

5 LIZ McLELLAN: Yes.

6 MARIAN SIMULIK: -- is the financial
7 penalty. So yes, that was assessed at that time,
8 and we would have informed Council when we told
9 them they are not going to make it and the penalty
10 for them is a million dollars, but we let them know
11 at the same time there is probably an impact on
12 them financially because they are not getting our
13 money and they have to keep this going for we don't
14 know how much longer.

15 LIZ McLELLAN: Right. And then was
16 there any kind of assessment at that time too about
17 the -- I mean, I am appreciating that you are in a
18 contract, but was there any assessment of RTG's
19 financial situation and OLRTC's financial situation
20 when you are like slapping on that million dollars,
21 even though it is a million dollars which is a drop
22 in the bucket, but still.

23 MARIAN SIMULIK: No.

24 PETER WARDLE: The -- that is fine.

25 LIZ McLELLAN: How many times did RTG

1 miss the penalty?

2 MARIAN SIMULIK: You mean miss the
3 revenue service availability?

4 LIZ McLELLAN: The RSA date, yes.

5 MARIAN SIMULIK: I think they missed it
6 three times, but honestly, it was sort of -- it was
7 this ongoing saga at that point in time. There
8 were rules or there was -- in the Project Agreement
9 they have to give notice as to when they'll meet
10 revenue service availability a certain number of
11 days in advance. And if I recall correctly, I
12 think they missed it three times, but it could have
13 been twice and then the third time they made it.
14 And I'm sorry, it is a bit fuzzy.

15 LIZ McLELLAN: So I understand that the
16 City decided to guarantee the long-term private
17 financing component of RTG's project financing. I
18 believe you said you didn't like that description
19 of guaranteeing the debt of RTG. I can't remember
20 what you called it or referred to it as.

21 MARIAN SIMULIK: We actually took over
22 the debt. As opposed to guaranteeing it, we
23 actually more or less bought that debt from the
24 long-term lender. We became the de facto payor to
25 the long-term lender.

1 LIZ McLELLAN: So you kind of -- the
2 City functioned as the banker in between the
3 long-term lender and RTG?

4 MARIAN SIMULIK: That's correct.

5 LIZ McLELLAN: And what led to this
6 decision?

7 MARIAN SIMULIK: This decision was made
8 because of Stage 2. It had nothing to do with
9 Stage 1. There was a desire to have competitive
10 tension, to have the Stage 2 not just go to RTG but
11 to have competition for it, and in order to have
12 competitive tension, it was felt that RTG could not
13 bid for it because everyone would say, Well, the
14 incumbents, the ones who built Stage 1, are going
15 to bid on it, so they have the inside track so what
16 is the point of bidding.

17 So in order to get the competitive
18 bidding tension, they decided that they would
19 approach RTG and say, What if we set it that we'll
20 buy the trains from you. You'll do the maintenance
21 and you will oversee the construction of Stage 2
22 because you are going to be doing the maintenance
23 on it. That becomes -- we are going to carve that
24 work out for you, and then as a result of that you
25 are not going to bid.

1 Well, RTG was okay with that concept,
2 but the long-term lenders had a say in it because
3 with more maintenance at risk, more maintenance
4 service payments at risk because they would be
5 taking on more work, their repayment was also
6 jeopardized. So they insisted that there be an
7 equity infusion into the mix, and as a result of
8 that, that was going to cost the City way more
9 money because the equity is the priciest of all of
10 the debts you have.

11 And so we already had with a -- because
12 we have the asset and the long-term lender is the
13 one who provides the money for the asset, we had an
14 ability to step in and take over that debt. So the
15 decision was made and we went to Council and got
16 them to approve debt authority to basically take
17 over that debt.

18 LIZ McLELLAN: And what was the dollar
19 value of the equity infusion that would have been
20 required?

21 MARIAN SIMULIK: I don't remember the
22 amount that would have been required, but it was
23 substantial from what I had understood.

24 LIZ McLELLAN: So when the City took
25 over RTG's debt, was there a change in the

1 information that the City received?

2 MARIAN SIMULIK: Yes, as the long-term
3 lender, you are entitled to access to reporting
4 from the Lender's Technical Advisor and they also
5 have a commercial agent who provides -- has access
6 to reports and so on.

7 So that as part of the change, yes, the
8 City was able to have more insight into what was
9 going on with respect to RTG and the project.

10 LIZ McLELLAN: And were there any other
11 benefits to that too, the City --

12 MARIAN SIMULIK: Not that I am aware
13 of. It just provided us with more insight. We
14 attended lender committee meetings where they
15 discussed, you know, were they going to call the
16 debt. Was -- like how far did they want to go?
17 There was a bunch of steps that lenders can take to
18 try to get performance, to the point where they
19 actually could even have I believe gotten rid of
20 RTG and brought in their own to finish the project.

21 So we were part of those discussions,
22 but it was -- until revenue service availability,
23 it was more or less the short-term lenders were the
24 ones who had the major stake in what was going on.

25 LIZ McLELLAN: And then so who was

1 involved in the decision to take on RTG's debt?

2 MARIAN SIMULIK: That was a decision
3 made by the Executive Steering Committee. There
4 was a presentation made. I think Chris Swail would
5 have been leading the Stage 2, and they were
6 talking about the MOU and what were the impediments
7 to getting the MOU with RTG and the discussion was
8 around should we take over the debt and the
9 decision was yes, and then we went to Council and
10 they had to approve the debenture authority and
11 that was it.

12 LIZ McLELLAN: Who came up with the
13 idea to take on the debt, though? Because like
14 that is a fairly -- I don't know if this is allowed
15 for a Project Agreement, but that is like a fairly
16 sophisticated solution, so was it Chris Swail? How
17 was the decision arrived at?

18 MARIAN SIMULIK: I am not certain of
19 where the decision was made. Boxfish was advising
20 at that time as well, and it may have come from
21 there, but whoever did it, it was genius.

22 LIZ McLELLAN: Were you consulted on
23 that decision even before the ESC, considering your
24 role as City Treasurer?

25 MARIAN SIMULIK: Yeah, it was whether

1 we could do it and what would be entailed, so yes,
2 there were discussions. So we had to look into,
3 you know, how we would present that, what kind of
4 authority we needed, and so on, so yes.

5 LIZ McLELLAN: And what was the nature
6 of those discussions? Who was involved in those
7 discussions that you had, the preliminary ones?

8 MARIAN SIMULIK: I don't actually
9 remember. I know the discussions were primarily
10 with my Manager of Treasury, because he runs the
11 debt program at the City. So I had discussions
12 with him. It was most likely with Chris Swail, and
13 maybe Brian Guest. I am not -- I don't recall.

14 LIZ McLELLAN: And have you -- we
15 didn't go through your past background, but have
16 you ever heard of an arrangement like this
17 happening?

18 MARIAN SIMULIK: Where someone steps in
19 and takes over the debt?

20 LIZ McLELLAN: Yeah, where the owner of
21 the project is also the lender on the project too,
22 yeah, the owner takes over the debt?

23 MARIAN SIMULIK: No, but I am familiar
24 with step-in rights. That was -- even when we were
25 the very first iteration of the light rail project,

1 the one that got -- the project that got cancelled
2 back in 2007 or whatever it was, that one we had
3 step-in rights there.

4 So it was pretty -- it was a pretty
5 common concept, actually.

6 LIZ McLELLAN: What was the
7 relationship like with RTG at that time when the
8 City stepped in and took over the debt?

9 MARIAN SIMULIK: Initially RTG was
10 just -- at least Antonio, and I don't remember
11 Antonio's last name, I'm sorry.

12 LIZ McLELLAN: Estrada?

13 MARIAN SIMULIK: Thank you. He was
14 quite happy with us taking over the debt, because I
15 think there was an expectation that the City would
16 allow them to not have to make the service payments
17 as per the contract, that we would in fact just pay
18 the long-term lender and then let them be able to
19 pay us when they could.

20 And then we told them that, no, that is
21 not how it is going to work. You are still
22 obligated to pay us, like you would have had to pay
23 the long-term lender under the same schedule, and
24 then they were not so happy.

25 LIZ McLELLAN: And so considering that

1 they are not so happy and then things are maybe
2 starting to change in the relationship, was there
3 any contemplation of the additional leverage that
4 the City would have obtained as stepping in and
5 taking over the debt and basically acting as RTG's
6 lender?

7 MARIAN SIMULIK: There was. We knew
8 what abilities we had as the long-term lender.
9 There were certain actions we could have taken, but
10 we never did.

11 So there was certainly an understanding
12 of it, but we all knew that that was sort of the
13 nuclear option and we weren't going there.

14 LIZ McLELLAN: What were those
15 abilities?

16 MARIAN SIMULIK: Well, basically as the
17 long-term lender, you could have called in -- when
18 they got to I think it was the hard stop date, that
19 you could have called the debt and then they would
20 have had to either go out and refinance it or -- I
21 don't think it would have caused a bankruptcy
22 with -- those are very large firms, but it would
23 have caused them some financial distress, that is
24 for certain.

25 And calling the debt is -- the credit

1 markets react when something like that happens. It
2 would have cost them millions of dollars on other
3 projects because everybody would have all of a
4 sudden have reduced their credit rating. So that
5 is the nuclear option.

6 LIZ McLELLAN: And then just from a
7 high level, so what are the practical implications
8 on the day-to-day of implementing the Project
9 Agreement of the City taking on RTG's debt? Like
10 how does that change the relationship? What are
11 the daily implications of that?

12 MARIAN SIMULIK: There are no daily
13 implications to that. The debt is something that
14 is an obligation that RTG has agreed to, and they
15 have -- under the contract, they have to make those
16 payments at certain times at certain amounts, and
17 as opposed to paying the lender, they were paying
18 us. That is the only difference. There was no
19 other change.

20 LIZ McLELLAN: Okay. And then in terms
21 of the debt structuring, so how much of the City's
22 debt did RTG guarantee? Or sorry, how much of
23 RTG's debt did the City guarantee?

24 MARIAN SIMULIK: The full 225 million.
25 The equity portion is not -- that is the partners

1 are responsible for that. We don't -- so it was
2 only that 225 provided by the long-term lender.

3 PETER WARDLE: And again, I don't think
4 it is a guarantee. As I understand it, the debt is
5 assumed and then new debt is issued by the City to
6 the original lender. Is that --

7 MARIAN SIMULIK: That is correct.

8 PETER WARDLE: It is sometimes
9 described as a swap of debt.

10 LIZ McLELLAN: What was the nature of
11 the negotiation between the City and the lender
12 when the City first decided this would be an
13 option, the debt swap?

14 MARIAN SIMULIK: I understand -- I was
15 not part of the negotiations, but I understand we
16 were actually looking for them to take a -- to see
17 if they would take a rate cut seeing as they now
18 had a very secure source of repayment, as opposed
19 to a very insecure source. And so would they in
20 fact see it as lower risk and therefore reduce the
21 cost of it. But they wouldn't. So that was that.

22 LIZ McLELLAN: And were the Senior
23 Lender Technical Advisors involved in those
24 discussions?

25 MARIAN SIMULIK: I wasn't part of those

1 discussions, so I can't tell you who was involved.

2 LIZ McLELLAN: And what did you
3 understand the role of the Senior Lender Technical
4 Advisors to be?

5 MARIAN SIMULIK: Well, the Technical
6 Advisor came and did an assessment for the lenders
7 on a regular basis as to the progress. He is a
8 rail expert, so he would have been able to go in
9 and say, you know, were they actually on track to
10 make it? What were the problems that they were
11 encountering? What had they organized to deal with
12 those problems?

13 So that was his role.

14 LIZ McLELLAN: And then so after the
15 City stepping in, what kind of information did they
16 receive from the Senior Lender Technical Advisor?

17 MARIAN SIMULIK: So he was a Technical
18 Advisor for both the short-term and the long-term
19 lenders.

20 LIZ McLELLAN: Okay.

21 MARIAN SIMULIK: There was only one
22 Technical Advisor.

23 LIZ McLELLAN: Okay.

24 MARIAN SIMULIK: So we received his
25 regular reporting and had -- when he would have a

1 report, there would be a meeting and we would
2 attend, along with all of the short-term lenders.

3 LIZ McLELLAN: Okay. And how often
4 would you receive those reports?

5 MARIAN SIMULIK: At the end, we were
6 receiving those reports fairly regularly, once they
7 missed the RSA, because then all of a sudden the
8 lenders are starting to get concerned. And so they
9 were requesting more frequent reporting, so -- at
10 least it appeared to us. I think he was reporting
11 on a monthly basis, but I honestly can't tell you
12 the frequency with any degree of accuracy.

13 LIZ McLELLAN: And then would the
14 reports be accompanied by a meeting?

15 MARIAN SIMULIK: Yes, then there would
16 be a meeting and he would sort of walk you through
17 what he saw, because he was -- he would come to
18 Ottawa and actually do a physical inspection
19 sometimes. Sometimes it was just he would get
20 reports.

21 But yes, he would give his assessment
22 of where they were at and what they were doing.

23 LIZ McLELLAN: And what types of
24 meetings would the City have after those meetings
25 to follow up on his findings on RTG's progress?

1 MARIAN SIMULIK: Well, we would meet,
2 the City would meet afterwards and we would sort of
3 look at what the long-term lenders and short-term
4 lenders were being -- what that technical
5 assessment was, versus our own technical assessment
6 as to where they were, the progress, to see if
7 there were differences.

8 LIZ McLELLAN: And who else was
9 involved in the decision for the City to take on
10 the -- I guess I'll describe it how Mr. Wardle has,
11 take on -- do the debt swap, who else was involved?

12 MARIAN SIMULIK: Well, it would have
13 been the Executive Steering Committee. It would
14 have been Chris Swail, the RIO office that was
15 established for Stage 2. Then the report went to
16 FEDCO, and then it went to Council. So that is who
17 was involved in the decision.

18 LIZ McLELLAN: What about IO?

19 MARIAN SIMULIK: I don't remember them
20 being involved, but honestly there may have been
21 discussions with IO, but IO was not an advisor on
22 Stage 2 and this was a Stage 2 issue. So they may
23 not have been involved.

24 LIZ McLELLAN: In terms of other levels
25 of government, were they involved, the Province or

1 the Federal Government?

2 MARIAN SIMULIK: Not that I am aware
3 of, because this was the City acting on its own.
4 The long-term debt is solely the City's. The
5 Province and the Federal Government did not want to
6 have any portion of any long-term debt. They
7 wanted all of their payments, their 600 million, to
8 be paid out and done at revenue service
9 availability, and then that was it, they were out
10 from a financial contribution perspective.

11 LIZ McLELLAN: And what risk assessment
12 was done on the City, the City doing this, taking
13 on the debt?

14 MARIAN SIMULIK: I guess the only risk
15 assessment would be a review of the Project
16 Agreement and how secure the payments, that even if
17 RTG didn't get paid, they still had an obligation,
18 and so were we able to enforce that and the feeling
19 was -- or the thinking was yes, that it was
20 sufficient. We weren't particularly concerned that
21 RTG wouldn't make their debt service payments.
22 That -- again, not making your debt service
23 payments in their world is not good news because
24 that affects your credit rating.

25 LIZ McLELLAN: How did this change in

1 the relationship impact the City's relationship
2 with RTG?

3 MARIAN SIMULIK: At that point, the
4 relationship was not -- I mean, it was collegial
5 and we were all working toward the same end, but I
6 don't think it -- other than they were disappointed
7 that we weren't going to provide them with -- let
8 them off the hook for debt service payments, I
9 don't think it necessarily changed anything else.

10 LIZ McLELLAN: Did RTG communicate any
11 views about the City's decision to step in and take
12 on the debt?

13 MARIAN SIMULIK: Not to me.

14 LIZ McLELLAN: How about -- I realize
15 we have been going for an hour and this is fairly
16 technical, so would you like to take a five-minute
17 break? Is that good, and we'll reconvene at
18 4:30 --

19 MARIAN SIMULIK: No, we have about half
20 an hour left, right?

21 LIZ McLELLAN: Do you want to just keep
22 going until 5:00?

23 MARIAN SIMULIK: Yes, just keep going.

24 LIZ McLELLAN: Okay, and Madam Court
25 Reporter, is that okay with you?

1 THE COURT REPORTER: Yes.

2 LIZ McLELLAN: So at the time, was
3 RTG's -- and in terms of servicing the debt, was
4 RTG's payment to the City in the form of debt
5 service payments?

6 MARIAN SIMULIK: I'm sorry, I don't
7 follow your question.

8 LIZ McLELLAN: So at the time, what
9 were the financial obligations that RTG had to the
10 City in terms of servicing the debt once the City
11 took on the role as lender?

12 MARIAN SIMULIK: As outlined in their
13 lender's agreement, so they would have had to start
14 servicing the debt I think it was after the long
15 stop, and that is a particular date set and then
16 they had to start making those payments.

17 So at the time we took it over, no,
18 they weren't making debt service payments in 2017.

19 LIZ McLELLAN: Okay. And then in terms
20 of the -- were there daily payments that RTG owed
21 to the City at that time that would have been
22 impacted by the RSA date being missed?

23 MARIAN SIMULIK: Well, in the Project
24 Agreement, if they missed the RSA, there was the
25 penalty but then all of those mobility matters and

1 other items as well, those start to accrue as well.

2 And I don't remember if those are
3 assessed on a daily, weekly, monthly -- I don't
4 remember daily payments, but there might have been.

5 LIZ McLELLAN: Did RTG owe to the City
6 any daily liquidated damages payments?

7 MARIAN SIMULIK: Isn't the million
8 dollars the liquidated damages? Honestly, I don't
9 recall.

10 LIZ McLELLAN: I don't know if that was
11 a daily payment, though. I think --

12 MARIAN SIMULIK: No, that is a
13 one-time.

14 LIZ McLELLAN: Or three times, however
15 many times.

16 MARIAN SIMULIK: Every time they missed
17 the date, yes.

18 LIZ McLELLAN: So are you familiar with
19 a liquidated damages arrangement between OLRTC and
20 RTG in terms of when there are delays?

21 MARIAN SIMULIK: No.

22 LIZ McLELLAN: So you are not aware of
23 a daily liquidated damages payment that kicks in if
24 there have been delays in the construction of the
25 project?

1 MARIAN SIMULIK: And that is -- my
2 apologies to the reporter. Is that -- are you
3 referring to something between RTG and RT -- the
4 construction? OLRT?

5 LIZ McLELLAN: OLRTC and RTG.

6 MARIAN SIMULIK: I not aware of what
7 their arrangements are between the various
8 components of that consortium.

9 LIZ McLELLAN: So it is my
10 understanding that in the construction contract
11 there is a required completion date and that is
12 between OLRTC and RTG and failure to achieve this
13 date requires the payment of liquidated damages
14 which, depending on the circumstances, could be
15 \$125,000 to \$150,000 a day, plus any costs
16 associated with increased interest.

17 MARIAN SIMULIK: So that is not a City
18 contract, correct?

19 LIZ McLELLAN: Right. That is correct.
20 But I am just wondering if you are aware of that.

21 MARIAN SIMULIK: No, I am not. I am
22 only -- my job was on the City side, so I
23 understood the City contract. The contracts
24 between the components in the consortium were not
25 something I was aware of.

1 LIZ McLELLAN: So are you aware of any
2 requests by RTG to the City to allow them and to --
3 receive consent from the City to allow for a
4 reduced liquidated damages amount payment from
5 OLRTC to RTG? Are you aware of that request ever
6 happening?

7 MARIAN SIMULIK: No, I am not.

8 LIZ McLELLAN: Okay. So you are not
9 aware of that request?

10 MARIAN SIMULIK: No, I am not. I am
11 surprised you are saying there is a requirement for
12 them to go to the City when the contract is between
13 the two of them.

14 LIZ McLELLAN: Well, the City -- the
15 requirement would be from the City because, as I
16 understand it, RTG would have needed the City's
17 consent to reduce the liquidated damages payment to
18 OLRTC.

19 MARIAN SIMULIK: Well, okay, no, I
20 don't recall that.

21 LIZ McLELLAN: Okay. So switching over
22 to trial running and the RSA and the ESC's
23 involvement, so what was the role of the ESC during
24 trial running and what was the reporting like to
25 the ESC?

1 MARIAN SIMULIK: So the reporting -- I
2 think the reporting went directly to Mr. Kanellakos
3 on a daily basis of the trial running, but we were
4 informed when they got I think it was halfway
5 through or whatever and if there was -- and how
6 they were doing on it and so on.

7 And discussions about -- because I
8 believe there was some lack of clarity around
9 actually in the trial running how many days in a
10 row they had to be able to run and what was the
11 percentage of activity or whatever, like how many
12 hours, kilometres, that the trains had to run in
13 order to actually meet the criteria for having been
14 successful.

15 So there were discussions about that,
16 and --

17 LIZ McLELLAN: Well, let's pause there.
18 So what were -- from what you recall, what were the
19 main areas of focus around those discussions?

20 MARIAN SIMULIK: I think it might have
21 had to do with how many trains were running at the
22 time, at the same time, but honestly, that is a bit
23 murky. I know there were discussions about it
24 because they were having difficulty actually
25 getting to whatever the threshold was to say that

1 they had met it in order to get to revenue service
2 availability.

3 LIZ McLELLAN: And at the ESC level, do
4 you recall any discussion about a change in
5 criteria during trial running.

6 MARIAN SIMULIK: I remember some
7 discussion about the fact that the Project
8 Agreement was not as clear as it could have been,
9 and so how you interpreted it was a bit problematic
10 and that there were discussions about how Executive
11 Committee would define it and I think -- or would
12 agree to defining it. And that was basically
13 advice we received and it may have been legal
14 advice, so I will stop there.

15 LIZ McLELLAN: Did you feel that the
16 ESC was receiving enough information about trial
17 running at the time?

18 MARIAN SIMULIK: From my perspective
19 being the finance person, yes. That is all
20 engineer stuff, so...

21 LIZ McLELLAN: And who was advising the
22 ESC about the progress of trial running?

23 MARIAN SIMULIK: I know Mr. Manconi was
24 there and Michael Morgan might have been involved
25 at that point in time. Who else, honestly I don't

1 recall. There is always usually 10 to 15 people
2 sitting around the table.

3 LIZ McLELLAN: And do you recall
4 Mr. Manconi speaking about a change in trial
5 running criteria or a change in trial running from
6 what had initially been planned?

7 MARIAN SIMULIK: No, I am sorry, I
8 don't remember if Mr. Manconi was the lead on that
9 or who was.

10 LIZ McLELLAN: And were you or the ESC
11 briefed on the system readiness based on the data
12 from trial running for public service?

13 MARIAN SIMULIK: There were discussions
14 around overall system readiness and trial running
15 at the same time, I believe.

16 LIZ McLELLAN: And what was the outcome
17 of those discussions?

18 MARIAN SIMULIK: I believe -- you know,
19 I honestly don't remember. All I know is we went
20 into service in August, and we had I think it was
21 two weeks -- oh, hang on. My battery power is at
22 15 percent, so it is a good thing we are ending.

23 So --

24 LIZ McLELLAN: Do you want a moment to
25 plug your computer?

1 MARIAN SIMULIK: If you wouldn't mind.

2 LIZ McLELLAN: Yes, of course. We can
3 go off the record.

4 MARIAN SIMULIK: Okay.

5 [Discussion Off The Record.]

6 LIZ McLELLAN: So I think we were
7 talking about system readiness and you receiving
8 data from trial running and what you recall.

9 MARIAN SIMULIK: So there was -- during
10 that whole period, there was lots of information
11 coming. And then at some point, and I don't
12 remember exactly when it was, I guess we were
13 getting reports as well from -- or that might have
14 been for substantial completion. Never mind. That
15 was for substantial completion.

16 We were getting reports on the trial
17 running and the system readiness and the decision
18 to accept the system in I believe early August, and
19 then there was a period where the City had to
20 transition over to it to open on August 18th or
21 whatever day it was, so in 2019.

22 LIZ McLELLAN: Are you aware -- so I
23 understand that the plan from the outset of the
24 project was to accomplish a complete transition
25 from the bus rapid system to the light rail rapid

1 transit system immediately so that there was no
2 sort of gradual transition from one area of service
3 to another?

4 MARIAN SIMULIK: That was the initial
5 plan, but then it -- they kept it running for I
6 think it was a week or something like that. They
7 kept it for a certain period of time, and then they
8 stopped the parallel service and started the full
9 integration in of bus and light rail.

10 LIZ McLELLAN: And are you aware of
11 RTG's suggestion or proposal for a soft launch?

12 MARIAN SIMULIK: No, I am not. If
13 there was, honestly, I don't remember it. I am not
14 certain what a soft launch is.

15 LIZ McLELLAN: And you are not familiar
16 with financial implications of a soft launch, like
17 any discussions around a soft launch from a
18 proposal by RTG?

19 MARIAN SIMULIK: So I am not certain
20 what a soft launch is. If you could perhaps tell
21 me?

22 LIZ McLELLAN: So I think maybe Ms.
23 McGrann might step in too, but it is kind of prior
24 to going into service, having like a week or two
25 where you are running the system and trying to work

1 out any kind of quirks or anything like that.

2 MARIAN SIMULIK: Oh, okay. No, I am
3 not aware of their proposal to do that, and I am
4 not aware of any financial consequences being
5 assessed as a result of that, if there was a
6 proposal.

7 KATE McGRANN: Just a couple of
8 follow-ups, and as a heads-up, I'll try to do them
9 all at once so we may jump around a little bit
10 here.

11 But following on Ms. McLellan's
12 question, are you aware of any discussion either
13 internal at the City or with RTG about starting up
14 revenue service with less than full public service,
15 so for example, not running all hours of the day,
16 running fewer trains, not running on the weekends,
17 anything less than what was full service as
18 contemplated in the Project Agreement?

19 MARIAN SIMULIK: I am not aware of that
20 proposal. That is not to say there wasn't one, but
21 I am personally not aware of that.

22 KATE McGRANN: And I said I would jump
23 around and now we'll do some jumping. Jumping back
24 to the procurement process for a second, are you
25 aware of any concerns raised by anybody at all

1 about the fairness of the procurement process that
2 was run on either the RFQ or the RFP?

3 MARIAN SIMULIK: No, I am not.

4 KATE McGRANN: Was the City ever asked
5 as lender, after the debt swap, to consent to any
6 changes to any of the arrangements between RTG and
7 OLRTC?

8 MARIAN SIMULIK: Could you provide --
9 elaborate a little bit? I am not certain what you
10 are asking.

11 KATE McGRANN: Yeah. To your
12 knowledge, was the City ever asked to consent as
13 lender to any changes to the construction contract
14 or the contract as between RTG and OLRTC?

15 MARIAN SIMULIK: Oh, I see what you are
16 asking. I honestly don't remember.

17 KATE McGRANN: Okay. To your
18 knowledge, did the City ever advise IO that its
19 advice was no longer required on the project?

20 MARIAN SIMULIK: On Stage 1?

21 KATE McGRANN: On Stage 1.

22 MARIAN SIMULIK: Not that I am aware
23 of.

24 KATE McGRANN: Those are my follow-up
25 questions. Thank you very much.

1 LIZ McLELLAN: So just a few more
2 questions. So what direct interactions did you
3 have with representatives from RTG?

4 MARIAN SIMULIK: Not much. We -- I
5 would see them occasionally. They would come to
6 present to Executive Steering Committee. At one
7 point in time we were trying to settle a number of
8 disputes, variation disputes, and we met with
9 representatives from RTG to talk about the
10 potential of a settlement, and that didn't go
11 anywhere.

12 So that was -- really that was my
13 interaction with them. If I saw them or at FEDCO
14 occasionally they would come and have to answer
15 questions at FEDCO.

16 LIZ McLELLAN: And who did you
17 primarily interact with in your role at RTG, like
18 your counterpart, if there was one?

19 MARIAN SIMULIK: I didn't interact with
20 anyone. I don't know who their counterpart was,
21 who their finance person was.

22 LIZ McLELLAN: And in terms of the
23 deductions to payments to RTG, we kind of discussed
24 this, but just from a summary level -- and maybe
25 this is going to get into an area that Mr. Wardle

1 does not want me to go into, so I'll just ask my
2 question, and if it is not within the realm of what
3 is appropriate, just don't answer it.

4 But what was considered in the
5 discussion on whether to deduct payments from RTG?

6 PETER WARDLE: Sorry, are we talking
7 about during the maintenance term?

8 LIZ McLELLAN: We are talking about
9 just in general, like different remedies like what
10 we were talking about before in terms of with
11 respect to delays, different remedies, and the
12 process of deducting payments or holding back
13 payments.

14 PETER WARDLE: I mean, the witness has
15 already I think described to you in a general way
16 her understanding of the factors that led to the
17 liquidated damages deductions, but I don't think
18 that is what you are asking about.

19 LIZ McLELLAN: That is not. I am
20 asking about the types of deductions like the
21 mobility matters, for example, so the holdback of
22 those funds and just generally what the factors
23 were that led to the City's determination to deduct
24 those payments beyond the Project Agreement?

25 MARIAN SIMULIK: The City's

1 determination was what was defined in the Project
2 Agreement.

3 LIZ McLELLAN: Okay. And then were you
4 at all involved in Stage 2?

5 MARIAN SIMULIK: I was involved and I
6 was part of the Executive Steering Committee for
7 Stage 2, and then for the award, and I believe it
8 probably was started sometime in 2019. So sort of
9 the same involvement as I was on Stage 1.

10 LIZ McLELLAN: And based on your
11 involvement from Stage 1 to Stage 2, what changes
12 did you see incorporated from perhaps areas to
13 improve on from Stage 1 to Stage 2, what changes
14 did you see?

15 MARIAN SIMULIK: I would actually have
16 to think long and hard about that because I have
17 never really compared the two. I know that there
18 was a lessons learned document prepared for Stage 1
19 which influenced how Stage 2 was set out.

20 I don't think we had any -- there is
21 any private sector financing on Stage 2, so once
22 the financing isn't a problem or a concern, it
23 falls to the engineers and the planners to run
24 projects.

25 LIZ McLELLAN: So on that note, there

1 was obviously a different approach to financing,
2 and do you know why there was a change from Stage 1
3 to Stage 2?

4 MARIAN SIMULIK: I don't know.

5 LIZ McLELLAN: And from what I
6 understand, there is a different approach to
7 oversight of the private partner in Stage 2. Do
8 you know the reasoning behind that?

9 MARIAN SIMULIK: No, I don't.

10 LIZ McLELLAN: Are there any other
11 areas that are relevant to the Commission's mandate
12 that we did not discuss today that you felt we
13 should have touched on?

14 MARIAN SIMULIK: No, I think you have
15 had a very far-reaching set of questions.

16 LIZ McLELLAN: Okay, and then it is
17 part of the Commission's mandate as well to receive
18 recommendations based on Stage 1 and what occurred,
19 so do you have any recommendations that the
20 Commissioner should consider?

21 MARIAN SIMULIK: No, I don't.

22 LIZ McLELLAN: Okay, so subject to Ms.
23 McGrann having any further questions, those are my
24 questions today. And thank you very much.

25 MARIAN SIMULIK: Thank you.

1 KATE McGRANN: Just one. You received
2 an update part of the way through trial running.
3 What information over the course of trial running
4 was the Executive Steering Committee receiving
5 about the performance of the vehicles and the
6 system more generally?

7 MARIAN SIMULIK: That is a fairly
8 technical question, and to be honest with you, I
9 don't remember what in the specific type of
10 information we were receiving. I just remember
11 receiving information.

12 KATE McGRANN: Do you recall receiving
13 any information that RTG was having trouble meeting
14 the requirements of trial running?

15 MARIAN SIMULIK: Yes, I do.

16 KATE McGRANN: And was that the case
17 throughout the trial running period?

18 MARIAN SIMULIK: I don't believe so,
19 but I honestly don't remember specifically.

20 KATE McGRANN: Following trial running
21 up to the period, like up to the public launch of
22 the system for revenue service, were there any
23 discussions about concerns about the reliability of
24 the system at the Executive Steering Committee or
25 otherwise?

1 MARIAN SIMULIK: Not that I remember.

2 KATE McGRANN: And those are my
3 questions. Thank you. Mr. Wardle, do you have any
4 follow-up questions for Ms. Simulik?

5 PETER WARDLE: I don't, thank you.

6 KATE McGRANN: We can go off the
7 record.

8

9 -- Adjourned at 4:54 p.m.

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REPORTER'S CERTIFICATE

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

That the foregoing proceedings were
taken before me at the time and place therein set
forth;

That the statements of the
presenters and all comments made at the time of the
meeting were recorded stenographically by me and
were thereafter transcribed;

That the foregoing is a true and
certified transcript of my shorthand notes so
taken.

Dated this 7th day of May, 2022.



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WORD INDEX

< \$ >

\$1 66:1
\$1.8 16:23
\$100 12:13 67:6
\$125,000 110:15
\$150,000 110:15
\$177 19:6
\$2.1 21:19, 20
22:13 26:10
31:3 36:15
61:20
\$200 39:2
\$300 39:2
\$400 38:20
39:24 66:8
67:24
\$500 19:1
\$52 15:3
\$600 39:15 40:3
\$65 79:1

< 1 >

1 3:4 6:21
10:25 11:2
20:23 21:1
27:20 30:22
53:19 66:21
81:11 94:9, 14
118:20, 21
121:9, 11, 13, 18
122:2, 18
1.4 20:14
1.8 17:21
10 58:2 114:1
100 19:16 22:7
23:2 24:5
12th 20:1
15 10:20 57:12
58:2 114:1, 22
177 22:20
18th 115:20

< 2 >

2 27:21 81:11
94:8, 10, 21
97:5 105:15, 22
121:4, 7, 11, 13,
19, 21 122:3, 7
2.1 17:22, 25
18:4 20:15, 20
21:10, 11 26:13,
25 29:19 36:10,
19 37:12, 16, 17

40:15 54:13, 16
60:19

2.13 19:14 20:2
22:3, 19 25:1
26:25 29:25
33:25 37:23
44:4
2:00 1:17
2:07 4:1
20:9 3:20
200 45:16
2007 6:13
16:16 99:2
2008 16:10, 16
2009 3:4 20:16,
24 21:1 26:16
34:4
2010 17:20
19:22, 23 21:14
22:1 24:19
26:23 27:1
34:4 54:12
61:23 65:2
2011 53:20 59:2
2012 16:8
19:13, 23 20:2
23:17 24:11
82:20
2013 26:18
2017 76:2, 3
108:18
2018 16:10
91:23
2019 6:13 8:10
65:2 115:21
121:8
2022 1:8, 17
125:18
2042 18:12
21:1 3:6
225 50:11
101:24 102:2
24 91:23
25 57:25
250 45:16 50:9,
16 67:6 68:14,
22
25th 72:7

2011 53:20 59:2
2012 16:8
19:13, 23 20:2
23:17 24:11
82:20
2013 26:18
2017 76:2, 3
108:18
2018 16:10
91:23
2019 6:13 8:10
65:2 115:21
121:8

2022 1:8, 17
125:18
2042 18:12
21:1 3:6
225 50:11
101:24 102:2
24 91:23
25 57:25
250 45:16 50:9,
16 67:6 68:14,
22
25th 72:7

< 3 >

3:16 58:8
3:28 58:9
3:30 58:4, 6
300 49:25 50:10

33(6 5:17
33(7 6:5
350 67:1

< 4 >

4:30 107:18
4:54 124:9
40 59:17
400 19:1 32:16
39:5 45:15
50:5 67:9, 11
68:16, 21

< 5 >

5 6:7
5:00 1:17
57:11 107:22
50 59:17 71:7
5th 72:7

< 6 >

6 1:8
600 32:25
33:24 34:11, 22
70:1 106:7
63 19:15
65 78:24
6th 1:16

< 7 >

700 67:1
74 19:24
75 50:10
7th 125:18

< 8 >

89:3 3:24

< A >

abilities 100:8,
15
ability 25:11
27:24 35:9
95:14
absorb 26:20
54:20
absorbed 29:24
30:16
accelerate 59:3,
22
accelerated
62:12
accelerating
62:2

acceleration

63:2 64:20
accept 115:18
access 96:3, 5

accommodate
19:11

accompanied
104:14

accomplish
115:24

account 14:12
22:13 42:9
82:17

accounted 29:7
40:2

accounting
25:22 82:6
90:23 91:3

accrue 109:1

accuracy 104:12

achieve 79:1
80:23 110:12

achievement
77:11

achieving 80:4

acquisitions
19:24

Act 5:18 6:6, 8

acted 73:7

acting 100:5
106:3

actions 100:9

activity 76:11
112:11

actual 11:10

17:19 31:13

33:23 38:11

67:3

added 15:24

17:22 35:19

48:3 56:13

additional 15:23

19:6 22:20

35:13 42:10, 22

43:5 44:5

85:13 90:21

100:3

add-ons 15:21

adhered 87:17

adhering 88:2,
7 89:1

Adjourned 124:9

adjust 78:13

adjustments

24:1, 2

administer

10:21

administration
47:4

advance 72:24
93:11

advice 11:16,
19 12:3 26:11
52:1 55:24
65:23 79:17, 20
88:25 89:6
113:13, 14
118:19

advise 118:18

advised 6:6

87:23

advising 31:21

50:18 56:2

97:19 113:21

advisor 50:21

54:25 96:4

103:6, 16, 18, 22

105:21

advisors 26:12

29:5 30:21

31:5 55:6

56:12 88:19

102:23 103:4

advisory 11:3

affect 35:7, 20

AFFIRMED 4:3,
12

afford 18:5, 17,
21

affordability

27:13 44:10, 12,
17 45:7, 20

46:1, 6 68:4, 18

69:12

affordable 67:14

AFP 32:20

48:10

after 5:4 7:9

24:5 28:25

33:16 53:3, 4

54:9 75:9

103:14 104:24

108:14 118:5

afternoon 4:4

agenda 65:6

agent 50:21

96:5

ago 21:5 25:22

52:25

agree 113:12

agree 113:12

<p>agreed 78:9 101:14 Agreement 15:4, 17, 20 32:23 42:25 56:18 71:19, 23 78:9, 11 82:15, 16 83:24 84:5 85:10, 12, 18, 22 86:14, 17, 22 87:12, 16, 18 88:11, 22 89:2 90:20 91:22 93:8 97:15 101:9 106:16 108:13, 24 113:8 117:18 120:24 121:2 agreements 15:20 alignment 37:19 38:11 alleviate 59:20 allocated 13:4 14:19, 23 83:12 allocation 12:23 allow 67:14, 16 71:8 99:16 111:2, 3 allowance 39:5 allowed 38:18 97:14 alternative 19:3 32:24 amended 15:21 38:2 amendments 15:17, 19 amount 24:1, 24 25:1, 5 34:23 35:6, 7, 23 39:19 40:24 49:24 50:5 65:24 66:13, 14, 15 67:16 68:5 70:8 84:11 85:25 86:6 95:22 111:4 amounts 66:20 69:22 70:24 101:16 analysis 29:2 46:25 58:11, 21 60:18, 21 61:15</p>	<p>62:16 63:15 66:7 answers 5:21 anticipated 54:19 90:22 Antonio 99:10 Antonio's 99:11 anybody 117:25 apologies 110:2 appear 3:20, 24 appeared 30:25 104:10 appended 5:15 apply 85:3 appreciating 92:17 approach 22:23 35:11 68:7, 10 81:10 82:1, 2, 3, 9 88:10, 13, 16 94:19 122:1, 6 appropriate 32:13 120:3 approval 8:18 9:16 12:23 approve 40:22 95:16 97:10 approved 17:1, 2 19:10, 13, 25 21:19, 22 22:19 24:12 26:17, 22 36:10 40:24 79:13 approving 21:11 area 13:10 17:4 38:5 42:3 69:11 89:16 116:2 119:25 areas 37:22 38:1 40:13 65:19 112:19 121:12 122:11 arisen 53:8 arose 53:5 arrangement 98:16 109:19 arrangements 91:19 110:7 118:6 arrived 16:4 97:17 aside 12:14 asked 5:20 64:21 74:22 118:4, 12</p>	<p>asking 17:16 25:11 67:24 92:1 118:10, 16 120:18, 20 aspects 12:4, 5 assessed 14:24 83:18 92:7 109:3 117:5 Assessment 3:6 13:21 16:13, 18 20:13, 25 21:3, 12 22:4 33:9, 17, 20, 22 40:8 46:23 60:16 68:10 74:7 75:2 81:1, 8 92:16, 18 103:6 104:21 105:5 106:11, 15 assessments 33:11 asset 95:12, 13 associated 91:1 110:16 assume 43:4 assumed 102:5 assuming 55:6 56:9 assumptions 64:5 assurance 89:25 attend 55:7 62:18 64:6, 9, 10 65:2 104:2 attended 65:1 96:14 attending 1:16 12:2 August 114:20 115:18, 20 authored 61:7 authorities 9:9, 17, 21, 23, 25 10:2 authority 7:5 8:25 9:1 10:4 95:16 97:10 98:4 authorized 9:24 automatically 35:16 availability 42:16 44:20 65:17 70:25</p>	<p>72:25 83:10 86:5, 16 88:3 91:15 93:3, 10 96:22 106:9 113:2 available 42:11 83:19 86:21 award 11:18 121:7 aware 24:2 42:7 55:18 84:15 87:7 96:12 106:2 109:22 110:6, 20, 25 111:1, 5, 9 115:22 116:10 117:3, 4, 12, 19, 21, 25 118:22 awhile 25:22 52:25 < B > back 16:2 31:15 36:14 39:22 45:23 69:4 75:19 85:5, 25 87:14, 15 99:2 117:23 120:12 backed 81:23 background 98:15 backing 20:20 bad 40:10 bank 73:8 banker 94:2 bankruptcy 100:21 banks 10:10 base 66:21 67:7 based 86:20 114:11 121:10 122:18 basically 10:9 11:3, 5, 17 16:19 17:16 31:24 42:23 45:12, 23 46:17 47:13, 15 55:3 63:12 74:11 76:22 81:17 95:16 100:5, 16 113:12</p>	<p>basis 5:9 7:12 11:17 24:14 29:22 103:7 104:11 112:3 battery 114:21 beginning 7:19 54:20 believe 16:17 19:22 24:18, 20 27:1 40:17 63:6 65:25 66:5 68:24 70:24 74:23 75:22 76:1 77:2 86:23 87:8 91:13, 21 93:18 96:19 112:8 114:15, 18 115:18 121:7 123:18 benefits 96:11 Benjamin 2:12 best 37:21 46:18 68:2 Betsy 2:7 better 38:3, 16 bid 44:15, 16 45:12 46:1, 5 49:12 50:9 75:14, 17 94:13, 15, 25 bidders 44:11 45:18 50:7 67:24 bidding 67:13 94:16, 18 big 13:13, 15 16:24, 25 19:25 38:17 71:14 biggest 39:13 Bilgen 2:12 billion 16:23 17:21, 22 18:1, 4 19:14 20:2 21:19, 20 22:13 26:10, 14 29:19 31:3 33:25 36:10, 16 37:16, 17 38:22 39:5 54:13, 16 61:20 66:1, 21, 23, 24 bit 12:8 22:22 57:7 70:18 90:23 91:3 93:14 112:22</p>
--	--	---	--	---

113:9 117:9 118:9 Bloomberg 10:20 borne 35:14 bottleneck 59:13 bottom 47:1 63:11 bought 93:23 Boxfish 55:11, 16 56:13, 17 97:19 Boxfish's 54:23 break 57:2, 14, 17 107:17 Brian 55:13 56:18 98:13 briefed 114:11 briefing 42:1 64:7 briefly 32:18 bring 31:15 36:14 37:4 40:21 bringing 16:1 39:4 47:16 broke 12:12 brought 27:14 60:19 69:12 96:20 bucket 92:22 bucks 86:15 budget 12:13, 18 16:3, 6, 7, 8 19:14, 20, 21, 23, 25 21:19, 23, 25 22:3 24:9, 24 25:1, 8, 12 26:24 27:2, 13 28:12, 24 29:7, 9 30:25 31:3, 5, 18 33:15 35:8, 20 36:7, 16 41:8, 11, 12 44:4, 14 45:4 46:4 54:8, 10, 21 69:15, 18, 20, 24 75:11, 16 budgets 29:18 build 47:17, 22 buildings 38:13 built 31:14 64:5 83:13 84:25 94:14	bunch 31:12 45:22 96:17 bureaucracy 41:5, 20 bus 17:5 19:15 59:11, 15 83:1 90:2, 18, 21 91:2 115:25 116:9 buses 59:17 84:23 business 47:17, 19 buy 94:20 < C > calculating 22:23 call 11:12 48:8 96:15 called 16:12 18:6 84:12 93:20 100:17, 19 calling 100:25 camera 56:24 Canada 6:8 Canal 38:10 cancelled 99:1 cap 34:4 44:10, 12 45:7, 22 46:2, 6 68:18 capacity 17:14 25:17 26:3 27:7, 9, 25 28:25 61:16 63:16 capital 17:8 18:13 24:13 30:23 capturing 61:1 careful 89:14 carve 94:23 case 78:12 123:16 caused 81:21 100:21, 23 cease 8:8 ceiling 17:13 28:21 68:13 cents 64:1 certain 4:19 14:8, 25 32:21 41:22 45:19 52:13 61:1, 4 76:16 77:1	79:15 84:24 93:10 97:18 100:9, 24 101:16 116:7, 14, 19 118:9 certainly 13:14 20:9 54:18 88:19 100:11 CERTIFICATE 125:1 certified 71:20 125:4, 13 Certifier 71:16 certify 125:4 cetera 17:6 change 20:14 40:22, 23 68:4 78:4, 25 79:12, 21 80:16 88:1 95:25 96:7 100:2 101:10, 19 106:25 113:4 114:4, 5 122:2 changed 50:8 78:6, 11, 21 80:20 88:6 107:9 changes 15:22 19:11 45:13 71:4 77:19 78:16 79:18, 20 80:1, 15 81:10 118:6, 13 121:11, 13 changing 40:19 78:10 79:4 charged 30:7 charges 38:24 choice 76:9 chosen 45:6 Chris 97:4, 16 98:12 105:14 circumstances 15:5 16:4 59:7 65:3 84:16 85:8 110:14 CITY 1:7 2:6 6:13 7:6 9:2, 9, 18 10:8 11:4 12:15 16:24 17:10, 13 18:5, 20 19:6 24:8 25:16 26:4 27:7, 9 28:9, 10	29:4, 22 30:5, 23 32:8 34:2 35:14, 19, 25 36:6, 21 39:12 40:9, 16, 17 41:3, 6, 9, 18 42:19 43:3, 17 44:23 47:1, 11, 14, 18 50:18 51:16 53:3, 4, 17, 24 55:1 56:12 58:18 59:10, 17 60:8 61:13 66:5, 18 67:5 69:22 70:7, 12 72:14, 19 73:21 76:1, 6 79:16, 25 82:16 88:10 89:7 91:19 93:16 94:2 95:8, 24 96:1, 8, 11 97:24 98:11 99:8, 15 100:4 101:9, 23 102:5, 11, 12 103:15 104:24 105:2, 9 106:3, 12 108:4, 10, 21 109:5 110:17, 22, 23 111:2, 3, 12, 14, 15 115:19 117:13 118:4, 12, 18 City-funded 33:6 City's 16:3 25:11 31:4 34:5 35:9 46:19 58:13 61:15 66:12 68:20 69:18 73:20 85:17 87:11 101:21 106:4 107:1, 11 111:16 120:23, 25 civil 5:22 clarification 73:15 74:1 clarify 7:17 clarity 112:8 clause 53:22 clauses 83:23 clear 89:19	113:8 close 82:15 closed 83:25 84:1, 23 closely 50:23 85:22 closure 84:10 co-Counsel 4:18 Co-Lead 2:3 4:6, 7 collaborative 4:17 collapse 39:14 81:18 collapsed 39:16 collectively 88:11 collegial 107:4 come 12:19 25:9 26:12 35:22 36:3 45:13, 20, 22 55:22 62:1 67:14 68:4 97:20 104:17 119:5, 14 comfortable 32:5 57:5 66:6 80:1 coming 12:4 18:16 42:19 60:23 63:6 115:11 commence 5:1 commencing 4:1 comment 13:3 63:11 comments 64:22 125:9 commercial 96:5 commercially 50:6 71:5 COMMISSION 1:6 2:1 4:5, 6, 7, 23 Commissioner 122:20 Commission's 4:15, 24 5:3, 8 122:11, 17 commitment 33:21 34:22, 24 committed 34:12
--	--	--	---	---

Committee 6:16, 23, 25 7:2, 7, 14, 25 8:3, 13, 17, 23 9:12 11:23 12:9, 10, 14 13:8 14:8 37:2, 9, 13 51:5, 18 52:11 53:9, 13 55:8 61:22 72:4 84:8 86:12 88:18 90:9 96:14 97:3 105:13 113:11 119:6 121:6 123:4, 24
common 99:5
communicate 89:22 107:10
companies 45:12 74:20 75:6
COMPANY 125:22
compared 121:17
competition 94:11
competitive 94:9, 12, 17
complete 16:19 115:24
completed 80:9, 12
completely 52:2, 22
completeness 74:8
completion 42:17 44:21 65:17 71:1 77:2 80:22 83:10 86:7 110:11 115:14, 15
component 11:10, 13 32:7, 13 46:24 48:2 50:15 65:22 93:17
components 110:8, 24
comprised 15:18
computer 114:25

concept 95:1 99:5
concern 16:23 17:1 18:5 31:9 32:3 42:24 59:9 91:12 121:22
concerned 54:4 58:22, 23 80:4 91:17 104:8 106:20
concerns 27:2 59:20 117:25 123:23
conclusion 17:11 18:18
conducting 4:8
conduit 41:4
confidential 5:9 50:7 71:5
confirm 4:11 20:11
congestion 60:1
conjunction 56:6
consent 111:3, 17 118:5, 12
consequences 117:4
consider 122:20
considerations 46:21
considered 45:5 46:13, 15 48:18, 20 82:2 120:4
considering 44:5 97:23 99:25
consortium 110:8, 24
constant 37:24
constrain 35:17
construct 16:20
construction 17:23 26:9, 14, 15, 18, 22 30:3 31:11 35:13 36:12 44:8 52:7 55:16, 17, 19 75:6 76:5 77:15, 16, 20 81:2 87:22 94:21 109:24

110:4, 10 118:13
consult 53:4, 24
consultant 31:17
consultants 29:12, 13, 17 30:21, 24
consulted 53:4 97:22
consulting 29:22
contemplated 117:18
contemplation 100:3
context 83:12
contingencies 19:17
Contingency 12:9, 12, 14, 18, 24 13:4, 8, 12, 25 14:7, 10, 19, 22 15:1, 10 22:8, 11, 24 24:1 30:10 83:19, 20
continue 76:23 90:12
contract 11:18 30:4 42:13 44:9 70:23 71:12 88:3, 8 92:18 99:17 101:15 110:10, 18, 23 111:12 118:13, 14
contractor 70:7
contracts 110:23
contribution 32:23 33:5 35:15 106:10
contributions 36:1
conversations 31:19
correct 5:12 6:14, 17 8:6 21:21 22:6 24:19 30:18 33:14 59:5 94:4 102:7 110:18, 19
corrections 5:4, 7, 15

correctly 61:1 63:13 93:11
corresponding 39:19
cost 13:22 16:9, 20 19:6 26:20 27:20 30:16 35:19 39:16 41:22, 23 46:20 66:17 69:2 90:17 95:8 101:2 102:21
costly 32:8
costs 18:13, 15 22:14, 21 27:20 29:7, 20, 22 30:9, 25 33:23 35:13, 17, 18 36:7, 9 45:19 54:18 84:5 85:12, 13 90:21 91:1, 4 110:15
Council 7:5 8:23 9:16 13:2 17:2, 16 18:1 19:8, 10, 13, 19 20:19 21:11, 14, 17, 19 24:8 28:10 36:10, 15 40:16, 18, 21 45:25 62:23 86:25 87:14 89:24 92:8 95:15 97:9 105:16
COUNSEL 2:1, 2, 3 4:5, 7, 20 5:8 89:8, 11
count 58:14
counterpart 119:18, 20
couple 20:12 71:10 117:7
course 21:5, 10 25:21 33:2 39:14 115:2 123:3
Court 73:14, 25 107:24 108:1
cover 90:20 91:4
covered 89:17

credit 49:5, 9, 18 100:25 101:4 106:24
Cripps 23:20
criteria 112:13 113:5 114:5
critical 78:7 80:2, 6 81:6
Crown 5:23
CRR 125:3, 23
CSR 125:4, 23
cushion 28:19
cut 102:17
cycle 28:6 29:6

< D >
daily 101:11, 12 108:20 109:3, 4, 6, 11, 23 112:3
damages 109:6, 8, 19, 23 110:13 111:4, 17 120:17
data 114:11 115:8
date 6:18, 21 72:18 76:25 89:23 90:5, 14 91:10, 23 93:4 100:18 108:15, 22 109:17 110:11, 13
Dated 125:18
dates 71:22 80:23
day 1:16 59:18 110:15 115:21 117:15 125:18
days 16:2 70:9 71:21 93:11 112:9
day-to-day 101:8
DBFM 47:11 48:18 54:9, 11 58:16
de 93:24
deadline 87:24 89:19
deadlines 48:6 81:19
deal 55:25 83:7 103:11
dealing 56:15 67:21 90:7, 9

<p>dealt 35:21 91:20 Deana 2:11 125:3, 23 debenture 97:10 debt 9:24 10:1, 7, 9, 12, 21 17:13 18:8 27:20 28:21 32:6, 8, 12 37:20 38:21 39:5, 19, 25 43:4, 11, 16 49:4, 20 50:11, 14, 15 69:1 93:19, 22, 23 95:14, 16, 17, 25 96:16 97:1, 8, 13 98:11, 19, 22 99:8, 14 100:5, 19, 25 101:9, 13, 21, 22, 23 102:4, 5, 9, 13 105:11 106:4, 6, 13, 21, 22 107:8, 12 108:3, 4, 10, 14, 18 118:5 debts 95:10 December 3:4 6:13 8:10 20:1, 16, 24 21:1 24:11 decided 59:21 87:20 93:16 94:18 102:12 decider 60:7 deciding 11:11 decision 9:12, 13 15:11 23:4, 5 25:15 32:5 36:1 38:20 40:19 61:19 62:10 66:5, 13 67:15, 17 68:25 86:10 87:11 88:18 94:6, 7 95:15 97:1, 2, 9, 17, 19, 23 105:9, 17 107:11 115:17 decision-making 85:5, 8 decisions 7:4, 7 10:16 40:6</p>	<p>52:4 61:5, 11, 17 declaration 4:15 deduct 120:5, 23 deducting 120:12 deductions 87:3, 7, 12 119:23 120:17, 20 deemed 5:19 deep 31:14 38:8 40:3 define 113:11 defined 77:6, 24 80:11 84:22 86:18 88:4 121:1 defining 47:7 113:12 definition 71:18 78:13, 21 79:5 degree 104:12 delay 84:17 85:16 86:1 delays 83:12 84:18 85:14 86:20 109:20, 24 120:11 delegated 7:5 9:5, 9, 15, 21, 23 delegation 8:25 9:1 deliver 44:24 48:4 delivery 19:4 46:12 50:18 54:15 58:12, 24 82:18, 20 Deloitte 32:9 38:21 39:4 46:16 50:3, 24 65:24 department 11:5 17:7 29:20, 24 30:17 departments 30:7 department's 63:10 depending 110:14 depends 51:23 depth 38:4 40:7, 23</p>	<p>Deputy 11:4, 16 23:8 Derek 52:19 53:12 describe 10:25 37:25 38:16 105:10 described 12:1 102:9 120:15 DESCRIPTION 3:2 93:18 design 15:25 36:12 47:17, 22 55:2 design/build 47:15 design/build/fina nce/maintain 47:5, 9, 12 design/build/mai ntenance 48:25 designated 10:11 desire 19:8 35:16, 24 87:13 94:9 detail 28:8 63:20 detailed 36:11 determination 50:12 77:4 120:23 121:1 determine 17:9 27:8 32:11 85:19 determined 49:23 74:3 detours 90:12, 18 developed 13:15, 17 developing 56:17 Development 8:13, 17 dictating 88:16 difference 69:7 101:18 differences 82:6 105:7 different 30:14 33:16 66:4 70:19 87:11 120:9, 11 122:1,</p>	<p>6 difficulty 112:24 direct 119:2 directed 36:15 59:2 direction 7:14 17:17 18:1 25:4 36:3, 4 59:8 60:11 directly 89:17 112:2 directors 7:24 disappointed 107:6 discuss 65:3, 5, 19 122:12 discussed 25:8 26:8 44:3 46:9 53:11 59:25 60:2, 4 66:11 86:12 96:15 119:23 discussing 26:2 discussion 10:10 26:5 28:17, 22 48:14 53:10 54:17 63:1, 9 89:5 97:7 113:4, 7 115:5 117:12 120:5 discussions 9:11 24:23 25:7 26:3 27:5, 12, 16 28:1, 3, 7, 9, 10 34:2, 6, 9, 18 35:4, 8 36:18, 23, 25 37:8, 11, 15, 19 39:4, 8, 21 40:13, 16 41:2, 7, 21 50:3, 6 51:6 53:14 62:8 67:12 82:5, 10 89:1, 10 96:21 98:2, 6, 7, 9, 11 102:24 103:1 105:21 112:7, 15, 19, 23 113:10 114:13, 17 116:17 123:23 dispute 53:23 56:16</p>	<p>disputes 53:5, 7, 15, 24 55:19, 25 56:2, 5 119:8 distance 78:2 distress 100:23 document 81:4 121:18 documents 3:12, 19 doing 36:11 37:4 82:8 85:11 94:22 104:22 106:12 112:6 dollar 95:18 dollars 26:16, 18, 22 38:22, 24 64:2 92:4, 10, 20, 21 101:2 109:8 Downtown 3:4 16:12 17:10 20:24 21:1 59:12 60:1 76:4 draw-down 15:18 draw-downs 15:5, 7, 10 draws 13:11 15:3 drivers 83:3 90:2, 22 drop 92:21 dropped 67:20 due 70:8 < E > EA 33:22 earlier 34:23 early 11:11 14:6 16:2, 9, 15 33:21 77:22 115:18 earned 82:1, 2, 8 easy 47:23 Economic 8:12, 16 effect 82:8 effective 81:15 efficient 40:14, 20 elaborate 118:9 elected 26:25 62:8 election 24:21</p>
---	--	--	---	---

<p>emergency 15:15 encountering 103:11 ended 33:24 38:2 39:23 47:8 endorse 74:23 enforce 106:18 enforcing 85:9 engineer 71:16, 25 72:3 113:20 engineering 19:11 31:12 32:2 77:14 engineers 49:1 58:23 60:22 72:3 121:23 ensure 25:16 entail 11:24 24:9 entailed 83:2 98:1 enter 4:23 entered 5:4, 9, 14 entering 32:19 48:14 enters 34:2 entitled 96:3 entity 18:9 envelope 19:9 31:16 36:9 Environmental 3:6 16:13, 18 20:25 21:3, 12 22:4 33:9, 10, 17, 20, 22 60:15 equal 66:17 equity 43:16 50:10, 13 95:7, 9, 19 101:25 errors 5:13 ESC 6:19 8:3, 8 51:20, 22 52:17 55:12 56:4 74:14 88:25 89:7 97:23 111:23, 25 113:3, 16, 22 114:10 escalation 17:24 escaped 52:23 ESC's 111:22 establish 5:22 21:23</p>	<p>established 6:22, 25 14:4, 5, 7 20:15 21:24 43:1 44:17 54:11 71:22 105:15 establishing 23:2 estimate 25:3 33:9, 13 34:5 estimates 16:7 60:24 Estrada 99:12 evaluation 51:12 74:7, 8, 9 81:4 event 48:3 Eventually 12:11 70:12 everybody 101:3 evidence 4:14, 24 5:5, 10, 14, 25 6:4, 8 88:5 exactly 49:19 69:8 73:7 115:12 example 9:23 19:22 30:8, 23 38:4, 19 52:15 56:4 84:24 117:15 120:21 exceeded 85:2 Executive 6:16, 22 7:6, 14 8:3 9:11 11:23 37:2, 8, 13 51:18 52:10 53:9 55:8 84:7 86:11 88:18 90:8 97:3 105:13 113:10 119:6 121:6 123:4, 24 exercise 90:24 91:3 Exhibit 20:23 21:1 EXHIBITS 3:1 existing 59:11 expand 32:21 expansion 17:5 58:15 expect 47:21 expectation 99:15</p>	<p>expectations 33:12 expected 83:1 expensive 19:5 49:6 experience 47:18, 19 55:23 56:15 experienced 47:16 expert 26:11 29:5, 17 103:8 explain 12:20 59:7 explanation 9:19 explore 59:3 express 27:1 extending 90:17 extensive 9:10 56:15, 19 external 11:13 48:5 89:8, 10 extra 10:4 84:5 extracted 78:1 < F > facing 60:8 fact 17:9 18:16 19:12 25:16, 22 26:2 69:4 71:17 81:6 87:20 89:22 99:17 102:20 113:7 facto 93:24 factor 66:9 factors 66:12 120:16, 22 failure 48:4 59:14 110:12 fair 51:19 fairly 97:14, 15 104:6 107:15 123:7 fairness 118:1 fall 27:1 fall-out 90:8 falls 121:23 familiar 9:8 20:21 21:4, 6, 10, 16 53:17 59:23 74:21 79:8, 10 98:23 109:18 116:15 fare 18:20</p>	<p>far-reaching 122:15 fed 62:15 FEDCO 8:16, 17, 19, 21 9:16 13:2 24:8 28:11 59:2 60:12 61:4, 6, 9, 10, 15 62:1, 18 64:9, 22 65:5, 11 86:20, 25 87:6, 10, 14 105:16 119:13, 15 Federal 34:2, 7, 9, 18, 23 35:5 48:11, 14 69:14, 21, 23 70:10, 15, 20 72:1, 8, 20 73:8, 23 79:14 106:1, 5 Feds 35:22 73:2 78:8 feedback 75:10 87:10 feeding 60:25 feel 44:3 68:9 113:15 feeling 106:18 fees 29:6 fell 47:1 fellow 7:23 felt 66:6 68:6 94:12 122:12 fewer 117:16 figure 49:21 final 22:4 25:1 26:24 46:1 86:4 finally 16:8 26:17, 22 35:21 43:10 Finance 8:12, 16 17:7 18:10 29:20, 24 30:17 32:2 41:8 46:24 48:2, 24 49:2 51:13 54:6 60:6 63:5, 11 64:10, 11, 14 113:19 119:21 finances 65:3 financial 10:2 11:3, 7, 10, 13, 20 12:4, 5 17:14 18:7, 11</p>	<p>25:16, 17 27:7, 9, 25 28:14, 25 61:2, 16 62:3 63:16, 18, 23, 24 74:9, 12 90:16 91:6, 7, 12, 24 92:6, 19 100:23 106:10 108:9 116:16 117:4 financially 72:19 90:13 92:12 financials 65:15 financing 19:5 22:13, 20 32:24 40:25 42:23 45:14 47:1 48:5 49:23, 24 51:7 54:5, 18 63:21 65:22, 24 67:25 83:12 93:17 121:21, 22 122:1 find 26:19 35:17 43:19 45:12, 18 67:13 68:2 findings 63:2 104:25 fine 92:24 finish 58:11 62:16 96:20 firms 100:22 five-minute 107:16 fixed 30:4 34:22 35:6, 15 42:12 44:10 69:21 75:12, 13, 17 flexibility 58:13, 17 floor 68:13 flow 61:9 focus 48:23 112:19 folks 7:11, 12, 16 follow 85:21 104:25 108:7 followed 3:13 following 3:12, 20, 24 20:8 33:16 81:2</p>
---	--	--	---	--

<p>85:22 117:11 123:20 follow-up 4:20 30:12 46:8 118:24 124:4 follow-ups 56:25 117:8 foregoing 125:5, 12 foremost 85:21 foresee 13:19 forever 72:5 forget 22:7 form 15:12 108:4 forth 39:22 125:7 forward 17:16 62:11 found 38:25 46:18 68:17 76:13 frankly 77:17 frequency 104:12 frequent 104:9 front 17:16 front-ending 70:14 fruition 9:7 full 16:8 101:24 116:8 117:14, 17 full-time 11:17 fulsome 14:8 33:23 functioned 94:2 fund 12:18 13:12 15:5 17:10 90:19 funding 14:1 17:3 33:8, 11 34:7 35:4, 7, 9 72:20 76:23 funds 14:10, 15, 16, 19 15:17 18:15 42:9, 10, 20, 22 43:6, 17, 24 44:6 73:18 120:22 future 35:7 58:14 88:21 fuzzy 93:14 < G ></p>	<p>game 39:20 48:8 general 9:1 64:25 65:8 75:1 120:9, 15 generally 28:8 51:1 54:22 64:24 65:2 120:22 123:6 generator 32:1 genius 97:21 give 9:19 62:19 69:21 70:1 89:24 93:9 104:21 given 5:11, 24 9:18 55:22 giving 6:4 good 4:4 39:23 57:2, 4, 21 68:22 77:16 106:23 107:17 114:22 government 18:19 19:3 34:3, 6, 7, 10 35:5 48:10, 11, 14 69:14, 21 70:20 72:1, 2, 9 79:9, 12, 14 105:25 106:1, 5 Governments 34:19 69:23 70:10, 16 72:21 73:9, 24 gradual 116:2 granular 15:24 ground 5:20 Group 43:22 90:7 growing 59:10 guarantee 43:4, 11 93:16 101:22, 23 102:4 guaranteeing 93:19, 22 guess 7:19 22:12 25:25 40:13 51:24 52:2 62:5 67:6 105:10 106:14 115:12 Guest 55:14 98:13</p>	<p>guidance 55:25 guy 23:12, 18 < H > half 77:7 107:19 halfway 112:4 Hall 59:17 hand 88:5 hang 114:21 happen 27:19, 24 28:15 81:21 happened 13:22 19:12 26:6 40:10 45:25 49:8 54:1 happening 13:19 25:19 98:17 111:6 happens 27:21, 22 101:1 happy 99:14, 24 100:1 hard 100:18 121:16 head 7:20 12:15 15:14 23:13 62:6 heading 23:4, 12 heads-up 117:8 hear 75:14 heard 53:14 62:4 98:16 hearings 4:16, 24, 25 5:1 Held 1:15 85:25 help 23:14 45:13 high 33:10 63:25 101:7 higher 28:15 44:15 69:1, 3 75:14 hit 37:23 38:1, 16 hold 85:5 87:14, 15 holdback 84:11, 16, 19 120:21 holding 120:12 honest 22:25 123:8 Honestly 67:3 93:6 104:11 105:20 109:8</p>	<p>112:22 113:25 114:19 116:13 118:16 123:19 hook 40:11 44:24 107:8 hour 57:12 107:15, 20 hours 112:12 117:15 hundreds 38:23 < I > idea 16:12 63:20 97:13 identified 13:18 14:12, 20 17:18, 20 31:16 75:21 83:16 identify 13:25 49:13 imagining 37:6 immediately 116:1 impact 35:25 39:1 49:3 50:25 69:10 92:11 107:1 impacted 68:23 108:22 impediments 97:6 Implementation 8:5 54:25 implementing 101:8 implicated 72:19 implications 28:11 62:3 90:14, 17 101:7, 11, 13 116:16 important 76:4 80:3 improve 15:12 121:13 incentive 45:2 80:17, 21 incite 77:11 include 13:3 46:25 60:20 included 22:11, 19 24:14 29:1, 19 31:3 33:19 46:24 60:17 70:25</p>	<p>incorporated 121:12 increase 22:5 31:18 34:11 36:1, 13 increased 17:21 31:6 110:16 increases 18:20, 21 incriminate 5:21 incumbents 94:14 incur 29:22 incurs 29:21 Independent 71:16, 25 72:2, 3 in-depth 9:19 INDEX 3:1, 17, 22 inflation 17:25 18:21, 25 19:2 26:9, 10, 14, 15, 20 27:22 31:11 35:13 36:12 influence 32:4 influenced 121:19 information 60:25 61:9 62:15 74:14, 19 96:1 103:15 113:16 115:10 123:3, 10, 11, 13 informed 87:2 92:8 112:4 Infrastructure 31:20 32:10 33:1, 3 50:20 52:9 62:6 63:7 infusion 95:7, 19 initial 20:13 22:15 26:13 31:9 33:8, 12 34:5 60:15 72:18 74:7 116:4 initially 14:18 16:11 31:10, 16 32:15 34:12 38:22 46:15 47:6 50:4 60:16 61:25 65:22 67:8 71:6 75:21</p>
--	---	---	--	---

<p>99:9 114:6 initiatives 17:3 inject 42:9, 20 44:18 injected 44:6 injecting 43:23 Inquiries 5:18 65:9 inquiry 5:18, 25 insecure 102:19 inside 94:15 insight 96:8, 13 insisted 76:2 95:6 inspection 104:18 instance 5:23 instrumental 66:12 insufficient 75:16 integration 116:9 intends 4:23 interact 8:12 119:17, 19 interaction 24:8 51:4, 9 119:13 interactions 119:2 interest 27:20 38:24 49:3, 10 110:16 interested 86:25 internal 117:13 interpreted 113:9 interrupt 25:14 intervene 4:18 intervenes 73:14, 25 interview 4:8, 13, 17, 21, 22 6:11 20:8 invoice 70:13 71:15 72:10 73:1, 23 invoices 70:3, 21 invoke 87:11 invoked 91:24 invoking 86:1 involved 7:22, 24 10:6 11:6 23:4, 8, 10 30:1,</p>	<p>2 34:17 36:24 40:16 41:10 50:18 51:10 55:24 56:17 69:16 76:10, 16 78:16 79:2, 7, 9, 12, 15 82:22 83:6 84:18 86:10 89:10 97:1 98:6 102:23 103:1 105:9, 11, 17, 20, 23, 25 113:24 121:4, 5 involvement 10:25 11:11 13:7, 10 51:1, 15 52:14 77:19 111:23 121:9, 11 IO 38:21 39:4 40:7 50:3 51:21 52:16 53:4, 13, 17, 24 65:23 79:8, 14 105:18, 21 118:18 IO's 51:1 52:7 67:7 issuance 9:24 17:13 issue 8:25 10:1, 12 13:14, 15 49:4 59:15 64:20 81:17 84:10 85:17 89:22 105:22 issued 18:8 24:15 102:5 issues 7:13 8:18 10:8 11:4 47:24 51:19 53:5 55:4 60:8 65:16 88:21 issuing 10:7 items 3:13 13:23, 24 14:18 55:9 109:1 iteration 98:25 iterations 18:23 < J > jack-in-a-box 75:7 January 21:13</p>	<p>Jensen 7:20 23:15 jeopardized 95:6 job 63:17 110:22 John 7:20, 23 23:14, 16 56:7 joined 4:6 joint 88:18 July 72:7, 8 jump 117:9, 22 jumping 117:23 < K > Kanellakos 83:6 84:7 90:9 112:2 Kate 2:3 4:7 6:15 30:12, 20 46:10 56:23 85:4 117:7, 22 118:4, 11, 17, 21, 24 123:1, 12, 16, 20 124:2, 6 keeping 83:3 90:18 91:2 Kent 26:4 27:5, 12 kept 18:20 116:5, 7 kicks 109:23 kilometres 112:12 kind 15:14 27:11 28:18 33:12 43:5, 7 66:21 89:13 92:16 94:1 98:3 103:15 116:23 117:1 119:23 kinds 10:15, 17 15:9 30:6 31:14 66:3 Kirkpatrick 26:4 27:6, 12 66:6 knew 18:15 69:3 100:7, 12 knitting 54:6 knowledge 56:19 118:12, 18 known 54:15 < L > lack 112:8 laid 88:23</p>	<p>large 11:12, 13, 14 27:10 32:6 41:12 56:16 100:22 larger 32:7 largest 10:12 Larry 24:18, 23 late 82:17, 20 launch 116:11, 14, 16, 17, 20 123:21 layout 40:24 lead 10:11 51:25 64:18 114:8 leading 64:7 97:5 learned 81:4 121:18 leave 48:25 led 51:11, 12 94:5 120:16, 23 leeway 88:12 left 17:3 24:4, 5 28:25 107:20 legal 88:19, 25 89:6 113:13 lender 93:24, 25 94:3 95:12 96:3, 14 98:21 99:18, 23 100:6, 8, 17 101:17 102:2, 6, 11, 23 103:3, 16 108:11 118:5, 13 lenders 49:14, 15 91:13, 14, 16 95:2 96:17, 23 103:6, 19 104:2, 8 105:3, 4 Lender's 96:4 108:13 lending 42:21 length 84:24 lessons 81:4 121:18 letting 7:3 89:14 level 33:10 37:14 46:6 49:23 63:25 67:15 68:2 101:7 113:3 119:24</p>	<p>levels 18:18 79:9, 11 105:24 leverage 100:3 liability 5:22 life 28:6 29:6 LIGHT 1:6 19:15 29:9, 19 61:16 98:25 115:25 116:9 limit 87:18 limitations 35:4 limited 35:9 lined 59:18 lines 55:23 liquidated 109:6, 8, 19, 23 110:13 111:4, 17 120:17 listening 12:2 Litigation 2:2 Liz 2:2 4:4, 5 6:10, 18, 24 7:15 8:1, 7, 11, 20, 24 9:20 10:6, 24 11:22 12:7 13:9 14:3, 11, 16 15:2, 16 16:1 20:3, 7, 10, 22 21:4, 9, 15, 18 22:2, 9, 12, 17, 22 23:3, 9, 25 24:7, 17, 22 25:3, 10, 21 26:8, 23 27:11 28:5 29:3, 10, 13, 25 31:4, 19 32:17 33:7, 15 34:1, 13, 16, 21 35:3 36:2, 6, 17, 24 37:10, 21 38:6 39:3 40:1, 12 41:7, 13, 24 42:7 43:2, 20 44:2 45:5 46:7, 11 47:10 48:9, 17, 21 49:8, 22 50:1, 17, 25 51:17 52:6, 16, 20, 24 53:3, 16, 20, 22 54:8, 22 55:10, 15, 20 56:1, 11, 21 57:1, 4, 10, 15, 19, 24 58:3, 7, 10, 19 59:1, 6, 24 60:10 61:3,</p>
--	---	---	--	--

12, 25 62:17, 22,
25 64:3, 17, 24
65:7, 18 66:9,
19 67:5, 10, 23
68:8, 19 69:13,
19 70:17 72:15
73:5, 10, 13, 16
74:2, 13, 25
75:8, 19 76:10,
18 77:10, 18
78:15, 18, 23
79:2, 8, 16, 24
80:8, 15, 25
81:9, 14, 25
82:14, 21 83:11
84:9, 15 85:7,
16, 24 86:9, 19
87:5, 9, 22 88:9,
15, 24 89:12, 18
90:13 91:5, 9,
21 92:2, 5, 15,
25 93:4, 15
94:1, 5 95:18,
24 96:10, 25
97:12, 22 98:5,
14, 20 99:6, 12,
25 100:14
101:6, 20
102:10, 22
103:2, 14, 20, 23
104:3, 13, 23
105:8, 18, 24
106:11, 25
107:10, 14, 21,
24 108:2, 8, 19
109:5, 10, 14, 18,
22 110:5, 9, 19
111:1, 8, 14, 21
112:17 113:3,
15, 21 114:3, 10,
16, 24 115:2, 6,
22 116:10, 15,
22 119:1, 16, 22
120:8, 19 121:3,
10, 25 122:5, 10,
16, 22
LLP 2:8
locked 49:18
long 18:18
21:5 57:8, 18
58:14 83:25
108:14 121:16
longer 17:9
57:23 83:1

84:1, 3 90:22
92:14 118:19
long-range
28:14 29:23
63:23, 24
Long-Term 18:6,
11 25:15 43:11
49:14 50:11, 14
51:7 65:21, 24
67:25 91:13
93:16, 24, 25
94:3 95:2, 12
96:2 99:18, 23
100:8, 17 102:2
103:18 105:3
106:4, 6
looked 11:8
18:11, 13 46:16,
22 83:18 84:4
looking 28:18
29:14 39:9
55:2 67:13
68:5 102:16
lot 7:2, 4 51:8,
19 83:4 88:12
lots 115:10
lower 67:6
69:5 102:20
LRT 30:22 31:3

< M >
Madam 57:6
107:24
made 5:4, 7, 15
7:5 12:14
13:11 15:11
19:11 24:2, 3, 4
40:7 45:14
47:11 56:4
62:10 67:15, 18
69:6 71:4
77:19 79:21
80:9 87:3, 25
89:20 93:13
94:7 95:15
97:3, 4, 19 125:9
main 112:19
maintain 47:15,
23
maintained
47:20
maintenance
47:24 48:1
90:25 94:20, 22

95:3 120:7
major 96:24
majority 13:11
making 9:12
37:23 79:17, 19
80:1 106:22
108:16, 18
Management
12:9
Manager 7:6
9:2, 10, 18
12:15 26:4
28:10 36:22
41:3, 9, 19 98:10
Manager's 41:6
55:1
Manconi 7:23
56:7 82:25
84:7 88:19
90:7 113:23
114:4, 8
mandate 33:2
122:11, 17
March 59:2
MARIAN 1:7
2:6 4:3 6:9, 14,
17, 20 7:1, 18
8:6, 9, 14, 22
9:4, 22 10:8
11:2, 25 12:11
13:13 14:5, 14,
17 15:6, 19
16:6 20:5, 9, 17
21:8, 13, 16, 21
22:6, 10, 15, 18,
25 23:6, 11, 16,
23 24:3, 10, 20,
25 25:6, 13
26:1, 13 27:4,
14 28:13 29:8,
11, 18 30:2, 18
31:2, 7, 23
32:22 33:14, 18
34:8, 15, 20
35:1, 10 36:4, 8,
20 37:1, 15, 25
38:7 39:7 40:5,
17 41:11, 15
42:4, 12 43:9,
25 44:8 45:8
46:14 47:13
48:13, 19, 22
49:11, 25 50:2,
20 51:3, 23
52:8, 18, 21

53:1, 7, 18, 21
54:2, 10, 24
55:13, 17, 21
56:6, 14 57:3, 8,
13, 17, 20 58:6,
16, 20 59:5, 9
60:3, 14 61:10,
13 62:4, 21, 24
63:4 64:8, 23
65:5, 8 66:2, 14,
22 67:8, 11
68:1, 12, 24
69:17, 25 70:22
72:22 73:7, 11
74:4, 16 75:4,
12, 22 76:12, 21
77:13, 21 78:17,
20, 24 79:4, 11,
19 80:2, 10, 19
81:3, 12, 16
82:4, 19, 24
83:15 84:12, 20
85:6, 9, 20 86:3,
11, 23 87:8, 13
88:1, 13, 17
89:21 90:16
91:7, 11, 25
92:3, 6, 23 93:2,
5, 21 94:4, 7
95:21 96:2, 12
97:2, 18, 25
98:8, 18, 23
99:9, 13 100:7,
16 101:12, 24
102:7, 14, 25
103:5, 17, 21, 24
104:5, 15 105:1,
12, 19 106:2, 14
107:3, 13, 19, 23
108:6, 12, 23
109:7, 12, 16, 21
110:1, 6, 17, 21
111:7, 10, 19
112:1, 20 113:6,
18, 23 114:7, 13,
18 115:1, 4, 9
116:4, 12, 19
117:2, 19 118:3,
8, 15, 20, 22
119:4, 19
120:25 121:5,
15 122:4, 9, 14,
21, 25 123:7, 15,
18 124:1

market 10:13, 19
markets 101:1
Master 17:18
match 72:16
matter 23:22
matters 83:23
84:11, 13, 17
86:1 108:25
120:21
maximize 58:13
maximum 38:20
50:5
Mayor 24:18, 23
25:2 26:5, 25
28:11 40:15
41:9, 22, 24 87:6
Mayor's 40:15
41:1, 4, 5, 21, 25
62:9
McGrann 2:3
4:8, 18 6:15
30:12, 20 46:7,
10 56:21, 23
85:4 116:23
117:7, 22 118:4,
11, 17, 21, 24
122:23 123:1,
12, 16, 20 124:2,
6
McLellan 2:2
4:4, 5 6:10, 18,
24 7:15 8:1, 7,
11, 20, 24 9:20
10:6, 24 11:22
12:7 13:9 14:3,
11, 16 15:2, 16
16:1 20:3, 7, 10,
22 21:4, 9, 15,
18 22:2, 9, 12,
17, 22 23:3, 9,
25 24:7, 17, 22
25:3, 10, 21
26:8, 23 27:11
28:5 29:3, 10,
13, 25 31:4, 19
32:17 33:7, 15
34:1, 13, 16, 21
35:3 36:2, 6, 17,
24 37:10, 21
38:6 39:3 40:1,
12 41:7, 13, 24
42:7 43:2, 20
44:2 45:5 46:7,
11 47:10 48:9,
17, 21 49:8, 22

50:1, 17, 25
51:17 52:6, 16,
20, 24 53:3, 16,
20, 22 54:8, 22
55:10, 15, 20
56:1, 11, 21
57:1, 4, 10, 15,
19, 24 58:3, 7,
10, 19 59:1, 6,
24 60:10 61:3,
12, 25 62:17, 22,
25 64:3, 17, 24
65:7, 18 66:9,
19 67:5, 10, 23
68:8, 19 69:13,
19 70:17 72:15
73:5, 10, 13, 16
74:2, 13, 25
75:8, 19 76:10,
18 77:10, 18
78:15, 18, 23
79:2, 8, 16, 24
80:8, 15, 25
81:9, 14, 25
82:14, 21 83:11
84:9, 15 85:7,
16, 24 86:9, 19
87:5, 9, 22 88:9,
15, 24 89:12, 18
90:13 91:5, 9,
21 92:2, 5, 15,
25 93:4, 15
94:1, 5 95:18,
24 96:10, 25
97:12, 22 98:5,
14, 20 99:6, 12,
25 100:14
101:6, 20
102:10, 22
103:2, 14, 20, 23
104:3, 13, 23
105:8, 18, 24
106:11, 25
107:10, 14, 21,
24 108:2, 8, 19
109:5, 10, 14, 18,
22 110:5, 9, 19
111:1, 8, 14, 21
112:17 113:3,
15, 21 114:3, 10,
16, 24 115:2, 6,
22 116:10, 15,
22 119:1, 16, 22
120:8, 19 121:3,

10, 25 122:5, 10,
16, 22
McLellan's
117:11
means 33:21
69:2
meant 19:4
measures 37:22
mechanism
23:1 53:25
mechanisms
56:16 83:21
85:11, 14 87:17
meet 44:19
48:5 72:18
80:13 83:9
86:15 93:9
105:1, 2 112:13
meeting 20:2
46:19 76:7
81:19 104:1, 14,
16 123:13
125:10
meetings 12:2
41:17, 18 50:7
55:8 62:19
64:9, 11 65:1,
20 71:5 96:14
104:24
meets 32:20
61:4
Member 2:2, 3
6:16, 19 52:10
74:13
members 52:9
87:10
memo 63:22
mentioned
33:10
met 34:12, 14
70:6 71:18
80:11 87:24
90:5, 15 113:1
119:8
methodology
69:8
Michael 113:24
milestone 42:14,
24 70:6 71:6,
13, 18 75:20, 21
76:2, 6, 20, 22
77:3, 19, 23, 25
78:5, 10, 14, 22
80:7, 11, 20

81:10, 15 82:1
87:25 88:6
milestones
42:25 44:19
70:3, 19, 23
71:1, 3, 9 72:16
75:24 76:11, 15
77:16 78:17
79:13 80:5, 10,
13, 16, 17 81:1,
6, 20 83:9 88:2
million 12:13
15:3 19:1, 7, 15,
16, 24 22:7, 20
23:2 24:6
32:16, 25 33:25
34:11, 22 38:20
39:2, 5, 15, 24,
25 40:4 45:15,
16 49:25 50:5,
9, 10, 16 66:8
67:6, 9, 11, 24
68:16, 21 70:2
71:7 78:25
79:1 86:15
92:3, 10, 20, 21
101:24 106:7
109:7
millions 38:23
64:2 101:2
mind 89:4
115:1, 14
minimum 45:16
50:9, 15 68:14
minutes 10:21
57:12, 19, 20, 23
58:2
missed 15:11
73:19 89:19
93:5, 12 104:7
108:22, 24
109:16
missing 91:9
misunderstood
92:1
mix 95:7
mobility 84:10,
13, 17 86:1
108:25 120:21
model 27:15, 17,
24 30:16 32:20
46:12 47:12
48:11, 18 50:19
54:9, 11, 14, 15
58:24 60:7 61:2

modelled 27:18
66:3
modelling 29:14
33:16 38:22
44:7
models 46:13,
15, 23, 24 58:17,
19
moment 89:4
114:24
Mona 42:4
money 14:24
42:19 43:15
70:4 72:6 85:5
92:13 95:9, 13
Monkman 23:7
42:5 82:12
month 65:11
monthly 104:11
109:3
Morgan 113:24
MOU 53:17
97:6, 7
move 31:13
46:11
moved 23:17
38:10
multiple 67:4
Municipal 82:7
murky 112:23

< N >
Nancy 62:5
63:7 64:6, 13, 17
nature 51:24
56:1, 5 98:5
102:10
necessarily
41:10 73:20
88:12 107:9
needed 7:4
8:18 12:21
15:9 30:7
42:10 49:5
66:15 83:25
84:3 98:4
111:16
needing 31:18
needs 17:8
44:5 84:23
NEESONS
125:22
negotiating
78:16

negotiation
102:11
negotiations
34:17 102:15
net 69:2
new 18:17
102:5
news 106:23
nickels 64:1
non-
typographical
5:15
normally 9:6
note 34:1 64:4
121:25
noted 3:19, 23
notes 20:4, 5
125:13
notice 93:9
notices 90:2
NPV 69:5
nuclear 100:13
101:5
number 14:18
16:9, 17, 19, 22,
24 17:25 18:4,
17, 22, 23, 24
19:10 21:11
22:4 27:23
30:1, 3 31:25
32:1, 3, 10
33:19 37:24
39:7 45:9 60:6,
17, 20 62:13, 14
75:24 93:10
119:7
numbers 29:16
60:11

< O >
object 6:7
objected 5:19
objective 46:19
obligated 99:22
obligation
101:14 106:17
obligations
108:9
O'Brien 24:19
26:6
O'Brien's 24:23
obtain 4:14
obtained 100:4
occasionally

<p>119:5, 14 occurred 122:18 office 7:19, 21 8:5 13:17 24:23 36:22 40:15 41:1, 4, 5, 6, 21, 25 54:25 55:1 56:7 61:6, 9 62:9 63:7 79:5 105:14 offset 66:17 OLRT 110:4 OLRTC 42:8 43:7, 23 109:19 110:5, 12 111:5, 18 118:7, 14 OLRTC's 92:19 ones 46:25 55:3 76:1 91:16 94:14 96:24 98:7 one-third 18:19 33:25 one-time 109:13 ongoing 93:7 Ontario 31:20 32:10 33:1, 3 50:20 Ontario's 52:9 open 115:20 operate 56:19 operating 18:15 47:6 operation 81:1 operational 58:13, 17 90:6 operations 25:19 91:2 opportunities 59:3 opportunity 5:11 opposed 38:12 78:3 93:22 101:17 102:18 optimal 32:12 option 100:13 101:5 102:13 options 58:12 order 5:1 37:4 59:20 80:13 94:11, 17 112:13 113:1 organized 103:11</p>	<p>original 19:9 102:6 OTTAWA 1:6, 7 2:6 3:4 16:12, 25 17:11 20:24 21:2 104:18 Ottawa's 30:22 35:3 outcome 114:16 outgoing 43:7 outlined 74:5 108:12 outset 115:23 overall 12:13 26:9, 19 27:13 30:15 35:18 40:9 41:23 45:19 54:21 55:2 61:2 80:16 114:14 over-budget 28:24 oversee 7:10 94:21 oversight 7:1 9:5 11:9, 15 51:20 122:7 owe 109:5 owed 108:20 owner 98:20, 22 < P > p.m 1:17 4:1 57:11 58:8, 9 124:9 PAGE/LINE 3:2, 20 pages 3:24 paid 18:19 73:6, 11, 19 77:5 87:1 91:14 106:8, 17 parallel 116:8 parameters 11:7, 20 parcel 12:1 part 12:1 13:25 15:18 29:21 32:25 33:4 48:4, 24 49:12 53:10 56:8 58:21, 22 63:10 72:14 82:12 84:22 85:4 91:18 96:7, 21</p>	<p>102:15, 25 121:6 122:17 123:2 partake 34:8 participants 1:16 2:5 5:8, 14 particular 15:6 18:2, 22 25:7 27:2 28:24 41:12, 13, 15, 19 65:10 70:13 72:10 74:20 78:12 84:22 108:15 particularly 31:21 106:20 partner 79:22 122:7 partners 30:23 42:21 101:25 parts 58:24 party 26:12 29:5 passing 79:24 path 78:7 80:3, 6 81:7 pause 112:17 pay 42:24 70:7, 12 71:22 72:6, 10 73:3, 21 76:24 99:17, 19, 22 paying 101:17 payment 42:14 78:14 82:3 86:4, 5, 13 87:3 88:7 90:25 108:4 109:11, 23 110:13 111:4, 17 payments 42:14 70:15 75:20, 21 76:20, 22 77:3, 17, 20 78:19, 20 80:8 81:10, 15 82:1 87:25 88:2 95:4 99:16 101:16 106:7, 16, 21, 23 107:8 108:5, 16, 18, 20 109:4, 6 119:23 120:5, 12, 13, 24 payor 93:24 penalized 83:24</p>	<p>penalties 85:3 91:6, 7, 12, 24 penalty 92:7, 9 93:1 108:25 people 47:16 51:16 58:23 60:23 114:1 percent 27:21 114:22 percentage 112:11 perfect 57:1 58:7 performance 85:17 96:18 123:5 performed 33:3 period 17:9 18:14, 25 26:21 90:25 115:10, 19 116:7 123:17, 21 perjury 6:3 permits 4:19 person 5:24 11:5 113:19 119:21 personally 117:21 perspective 60:9 83:8, 18 88:7 106:10 113:18 Peter 2:7 23:14, 19 57:22 58:1, 5 89:3, 13 92:24 102:3, 8 120:6, 14 124:5 phases 77:12 physical 104:18 pick 71:2 picture 33:23 place 6:3 41:2 45:24 70:5 82:12 89:10 90:18, 22 125:6 placed 84:16 Plan 17:19 18:7, 12 25:16 28:14 83:13 115:23 116:5 planned 114:6 planners 121:23 Planning 3:5 20:25 21:2</p>	<p>29:23 30:16 60:23 62:6 63:8 82:22, 24 83:4 84:6 plans 63:23, 24 82:17, 19 87:24 89:20 plug 114:25 Plus 19:2, 14 25:18 110:15 point 11:5 12:12 18:4 23:11 25:24 40:6 41:20 42:18 43:13 44:25 59:13 66:3 83:5 86:24 93:7 94:16 96:18 107:3 113:25 115:11 119:7 political 83:8 politicians 8:22 90:10 portion 10:12 12:12 30:5 44:9 101:25 106:6 portions 19:21 position 68:11 73:21 88:20 positive 38:8 possibility 82:17 possible 59:21 85:23 posted 5:2 potential 13:19 53:5 82:3 119:10 potentially 39:15 40:10 power 114:21 practical 101:7 practice 85:18 predefined 77:1 predicted 49:19 prefer 57:16 preference 48:12 Preferred 74:23 75:2 preliminary 25:4 98:7 prepare 61:21</p>
---	--	--	---	---

<p>prepared 18:6 45:10, 21, 25 81:5 121:18 Present 2:10 55:8, 11 69:2 90:10 98:3 119:6 presentation 64:14 65:14 74:17 97:4 presentations 56:4, 8 62:19 presented 28:2 39:8 70:2, 3 presenters 125:9 presenting 24:10 51:5 63:8 pressure 48:5 presuppose 66:10 pretty 99:4 previously 44:7 price 10:17 30:4 42:13 44:10, 15 75:12, 13, 17 Pricewaterhouse Coopers 27:15 29:15 priciest 95:9 primarily 98:9 119:17 prior 82:14 87:23 116:23 priorities 25:18 29:1 private 19:4 32:12 38:21 39:11, 25 44:11, 13 46:4 49:23 50:15 65:21, 24 69:1 93:16 121:21 122:7 privilege 89:15, 17 privy 82:11 87:15 probability 13:21 problem 45:3 81:22 121:22 problematic 113:9</p>	<p>problems 75:13 103:10, 12 procedural 4:25 proceed 17:17 18:1 61:19, 23 proceedings 5:23 6:2 125:5 process 14:12 47:7 60:12 70:5, 11 72:14 73:3 74:5, 10, 17 75:9, 23 85:5, 8 117:24 118:1 120:12 procurement 31:22 50:21 51:11, 25 117:24 118:1 produced 3:13, 19 program 98:11 progress 7:10 8:15 9:6 12:2 24:16 52:3, 12 65:9, 12 69:24, 25 103:7 104:25 105:6 113:22 progressed 7:3 15:24 project 6:23 7:3, 8, 9, 10, 11, 16 8:15 9:25 10:5 11:1, 14, 17 13:20 15:3 16:3, 11, 19, 25 17:2, 11, 15, 19 18:2 21:25 22:24 23:7 24:16 27:10 28:6 29:6 31:1 32:20, 24 38:24 40:25 41:12, 14, 16, 19 42:9, 25 47:8 51:20 56:18 59:3, 4 61:20 63:16, 19 64:20 65:4, 10 69:15, 20 70:1 71:19, 23 77:12 80:17 82:15 83:13, 23 84:4, 22 85:1, 10, 11, 14, 18, 22 86:13, 17, 21 87:12, 16,</p>	<p>18 88:11, 22 89:2 90:20 91:22 93:8, 17 96:9, 20 97:15 98:21, 25 99:1 101:8 106:15 108:23 109:25 113:7 115:24 117:18 118:19 120:24 121:1 projected 28:16 projections 62:20 projects 9:6 56:16 101:3 121:24 project's 44:5 Property 13:13, 14 17:22 19:24 30:8 proponent 45:6 68:20, 22 74:24 75:3 76:14 proponents 67:12 proponent's 76:9 proposal 49:17 51:21, 24 116:11, 18 117:3, 6, 20 proposals 11:10 prosecution 6:3 provide 55:24 61:13 65:23 75:10 76:22 88:4 107:7 118:8 provided 10:5 61:15 63:14, 21 66:7 67:4 89:7 96:13 102:2 provides 95:13 96:5 providing 11:16, 19 12:3 60:24 Province 32:19 35:21 48:15 70:20 73:2 78:8 105:25 106:5 Provincial 17:12 19:3 33:8, 21 34:3, 6, 10, 18, 22 35:5</p>	<p>48:10 69:14, 20, 23 70:10, 16 72:1, 9, 20 73:8, 23 79:14 82:6 provisions 82:16 public 4:15, 24 5:3, 17 32:6, 8 83:8 90:11 114:12 117:14 123:21 punitive 87:21 purchase 13:14 purpose 4:13 6:24 13:10 76:19, 21 Pursuant 5:17 purview 9:14 put 13:21 17:15 20:23 27:17 43:15, 16 50:13 83:17 87:19 puts 10:14 putting 21:6 PwC 30:15 < Q > quarterly 13:1 24:14, 15 Queen 38:12, 13 question 5:19 6:7 26:11 30:12 64:15, 25 108:7 117:12 120:2 123:8 questions 3:14 4:19, 20 46:8 56:22 62:23 64:11, 19, 21 65:14 118:25 119:2, 15 122:15, 23, 24 124:3, 4 questions/ques ts 3:23 quick 4:10 59:21 quirks 117:1 quite 29:4 59:10 77:17 99:14 < R ></p>	<p>R/F 3:23 89:3 radical 52:2 radio 15:14 radios 15:8 RAIL 1:6 8:5 19:16 29:9, 19 47:16, 19 54:25 55:23 61:16 98:25 103:8 115:25 116:9 raise 7:13 raised 117:25 ramps 45:10, 23 rapid 17:5 59:11, 16 115:25 rapidly 59:10 rate 18:8, 21 49:3, 20 102:17 rates 49:10 rating 49:5, 9, 18 101:4 106:24 reach 15:1 reached 76:25 react 101:1 read 4:10 readiness 76:2 114:11, 14 115:7, 17 ready 77:8 real 63:19, 20 realigned 67:22 realignment 55:3 realize 8:2 12:8 36:12 107:14 really 11:21 13:16 20:15 22:3 28:22 32:6 40:1 47:18 48:23 49:7 51:4, 8, 9 52:4 58:22 60:3 63:17 66:15, 17 119:12 121:17 realm 10:3 120:2 reason 60:1 reasonable 15:1 68:7, 9 79:23, 25 reasoning 25:15 48:7 122:8</p>
--	--	--	---	---

reasons 59:22,
25 79:25
recall 15:4, 16
20:16 23:1
25:10 26:7
27:3, 4 28:4, 6
31:20 34:21
37:10 41:17
42:6 43:20, 23
44:1 48:16
56:3, 10 64:19
79:23 81:7
85:25 87:9
93:11 98:13
109:9 111:20
112:18 113:4
114:1, 3 115:8
123:12
receivable 5:25
receive 62:22
74:14 79:17
103:16 104:4
111:3 122:17
received 60:11
64:21 74:16, 22
96:1 103:24
113:13 123:1
receiving 43:17
52:11 72:20
104:6 113:16
115:7 123:4, 10,
11, 12
RECESSED 58:8
recipient 31:25
60:5
recollection
25:24 26:1
30:19 37:22
recommendation
s 56:5 61:8, 14,
22 122:18, 19
recommended
47:2 66:20 67:7
reconvene
107:17
record 115:3, 5
124:7
recorded 125:10
recover 84:5
85:12
reduce 26:19
35:17, 25 36:6,
8 39:1 45:18
67:16, 18 69:5
102:20 111:17

reduced 50:8
101:4 111:4
reducing 40:7
reductions
86:20
re-evaluation
54:17
refer 7:15 8:16
reference 20:19
referenced 81:5
referred 8:2, 4
45:9 64:12
93:20
referring 20:4
24:25 29:11
84:10 110:3
refinance 100:20
refine 47:4
refined 60:19
refrain 79:17, 19
REFUSALS 3:22
refused 3:14, 23
Register 13:18,
20, 24 14:4, 9,
20 83:15
regular 7:12
29:22 37:18
65:10 103:7, 25
regularly 104:6
reimbursed
73:12
relationship
99:7 100:2
101:10 107:1, 4
relayed 60:20
relevant 122:11
reliability 123:23
relying 88:11
remain 38:18
remedies 86:21
88:22 90:19
120:9, 11
remedy 85:19
remember 6:20
15:7 16:4, 18
23:9, 20 25:6, 9
26:5 28:23
35:1 37:7, 15
40:5 43:15
48:13 52:2
58:20 60:5
63:13 64:23
66:22, 23 67:3
71:14 77:22
79:20 85:24

86:6, 9 93:19
95:21 98:9
99:10 105:19
109:2, 4 113:6
114:8, 19
115:12 116:13
118:16 123:9,
10, 19 124:1
remotely 1:16
rent 84:3
renting 84:2
repayment
10:22 95:5
102:18
repeating 89:9
report 7:11, 12
12:25 13:5
20:19 21:7, 12,
17 24:11, 13, 15
46:14, 16 55:7
61:6, 14, 23
62:11 63:1, 5, 6,
12 64:4 65:11
69:22 86:19
104:1 105:15
reported 7:2
8:17 24:12
86:24
Reporter 57:6
73:14, 25
107:25 108:1
110:2 125:4
REPORTER'S
125:1
reporting 8:15,
21 37:3, 18
43:5, 6, 7, 10, 13
52:3 61:18
62:18 69:14
96:3 103:25
104:9, 10
111:24 112:1, 2
reports 12:3
13:1 24:15
52:11 62:19
64:10 96:6
104:4, 6, 14, 20
115:13, 16
representatives
119:3, 9
reps 62:8
request 12:17
79:21 111:5, 9
requested 12:3
19:19 42:1 78:5

requesting
12:19 68:6
104:9
requests 12:20
34:11, 14 111:2
required 6:5
15:17 32:23
33:1, 4 48:10
50:14 91:22
95:20, 22
110:11 118:19
requirement
19:2 76:5
111:11, 15
requirements
32:21 123:14
requires 32:19
110:13
re-review 72:12
rerouting 83:2
resolution 53:23
respect 30:21
41:1 61:16
96:9 120:11
responders
15:15
responsible
47:25 83:22
88:15 102:1
rest 52:14 71:2
result 10:5
35:25 38:3
55:6 80:4
81:11, 23 84:18
85:13, 25 94:24
95:7 117:5
results 11:8
28:3 37:3
RESUMED 58:9
retained 29:4
55:22
retired 8:9
retract 90:3
revenue 42:15
44:20 65:17
70:25 72:25
80:22 83:10
86:5, 16 88:3
91:15 93:3, 10
96:22 106:8
113:1 117:14
123:22
review 5:12
11:9 36:11

70:11 72:12
106:15
reviewed 64:5
72:13
reviewing 11:8
revisited 54:9,
11
revolved 90:17
Reynolds 2:8
RFP 47:8
51:14 56:18
74:4 75:22
118:2
RFQ 11:6 47:8
49:13 51:12
118:2
rid 96:19
Rideau 38:10
43:22 59:18
81:18
rights 98:24
99:3
RIO 7:19, 21
8:4 13:17 23:7,
10, 12 24:15
30:5 36:22
52:15 55:6
56:7 79:5, 10
105:14
Risk 13:18, 24
14:3, 9, 11, 13
32:14 39:10, 13,
18, 24 40:9
46:20 66:15, 25
67:19 68:6
83:11, 15 87:19
95:3, 4 102:20
106:11, 14
risks 13:19
14:20 48:17, 19
road 83:25
84:9, 23
rock 77:25 78:1
role 8:11 11:23
12:6, 10 29:21
51:1, 10 52:7
54:23 55:16, 18
56:2 80:16
82:13 97:24
103:3, 13
108:11 111:23
119:17
rolling 7:8
room 14:22

roughly 57:11
rounding 64:2
route 67:22
row 59:18
112:10
RPR 125:3, 23
RSA 72:17, 18
73:18 87:23
89:19, 23 90:14
91:9, 22 93:4
104:7 108:22,
24 111:22
RT 110:3
RTG 42:8 43:6,
7, 21, 22, 23
44:9 53:6, 8
70:7 71:22
72:16, 18 73:11
74:3, 11, 15, 19
75:2, 10, 20
79:22 80:17
87:1 91:8
92:25 93:19
94:3, 10, 12, 19
95:1 96:9, 20
97:7 99:7, 9
101:14, 22
106:17, 21
107:2, 10 108:9,
20 109:5, 20
110:3, 5, 12
111:2, 5, 16
116:18 117:13
118:6, 14 119:3,
9, 17, 23 120:5
123:13
RTG's 43:4
85:17 91:11
92:18 93:17
95:25 97:1
100:5 101:9, 23
104:25 108:3, 4
116:11
rules 93:8
run 47:24
84:24 112:10,
12 118:2 121:23
running 83:1
90:4 111:22, 24
112:3, 9, 21
113:5, 17, 22
114:5, 12, 14
115:8, 17 116:5,
25 117:15, 16

123:2, 3, 14, 17,
20
runs 98:10

< S >
saga 93:7
sake 8:2 43:21
Santedicola
2:11 125:3, 23
sat 52:9
scale 45:23
scenarios 27:25
32:11 39:9, 22
46:17 66:4 67:4
schedule 42:14,
15, 17 62:2
63:3 83:14
85:1 86:2 99:23
schedules 87:11
Schepers 62:5
63:7 64:7, 17
scope 15:22
scored 69:7, 8
74:18
scoring 68:20
script 4:11
se 17:19
section 5:17
6:5, 7
sector 19:4
32:6, 8, 12
38:21 39:11, 25
44:11, 13 46:4
50:15 69:1
121:21
secure 49:20
102:18 106:16
Segal 2:7
selected 71:9,
12 75:2, 10
76:15 77:9
selection 46:12
54:9 74:2, 15
sells 10:15
send 71:15, 21,
25 72:4, 6, 24
Senior 102:22
103:3, 16
separate 30:10
service 19:3
42:16 44:20
65:17 70:25
72:25 80:22
83:1, 10 86:5,
16 88:3 90:4,

18 91:15 93:3,
10 95:4 96:22
99:16 106:8, 21,
22 107:8 108:5,
18 113:1
114:12, 20
116:2, 8, 24
117:14, 17
123:22
servicing 108:3,
10, 14

sesquicentennial
76:3
set 9:10 12:13
16:8 17:25
19:20, 21, 23
20:19 21:19
22:1 32:15
49:3 50:5
54:13, 16 67:8
68:13 70:23
71:12 72:11
75:23 76:8
80:23 94:19
108:15 121:19
122:15 125:6
setting 11:6
20:1 50:4
76:11, 17
settle 119:7
settlement
119:10
shake 39:6
shallower 67:21
shape 15:12
share 17:10
18:19 70:12
72:8
shared 5:7, 13
Shorthand
125:4, 13
short-term
42:21 49:14
91:14, 16 96:23
103:18 104:2
105:3
show 26:2
27:7, 8 28:20
63:15
shown 14:21
side 39:24
49:2 63:18
74:12 82:6, 7

110:22
sign 12:23
signed 53:19
significant 77:12
SIMULIK 1:7
2:6 4:3 6:9, 12,
14, 17, 20 7:1,
18 8:4, 6, 9, 14,
22 9:4, 22 10:8
11:2, 25 12:11
13:13 14:5, 14,
17 15:6, 19
16:6 20:5, 9, 17
21:8, 13, 16, 21
22:6, 10, 15, 18,
25 23:6, 11, 16,
23 24:3, 10, 20,
25 25:6, 13
26:1, 13 27:4,
14 28:13 29:8,
11, 18 30:2, 18
31:2, 7, 23
32:22 33:14, 18
34:8, 15, 20
35:1, 10 36:4, 8,
20 37:1, 15, 25
38:7 39:7 40:5,
17 41:11, 15
42:4, 12 43:9,
25 44:8 45:8
46:14 47:13
48:13, 19, 22
49:11, 25 50:2,
20 51:3, 23
52:8, 18, 21
53:1, 7, 18, 21
54:2, 10, 24
55:13, 17, 21
56:6, 14 57:3, 5,
8, 13, 17, 20
58:6, 10, 16, 20
59:5, 9 60:3, 14
61:10, 13 62:4,
21, 24 63:4
64:8, 23 65:5, 8
66:2, 14, 22
67:8, 11 68:1,
12, 24 69:17, 25
70:22 72:22
73:7, 11 74:4,
16 75:4, 12, 22
76:12, 21 77:13,
21 78:17, 20, 24
79:4, 11, 19
80:2, 10, 19

81:3, 12, 16
82:4, 19, 24
83:15 84:12, 20
85:6, 9, 20 86:3,
11, 23 87:8, 13
88:1, 13, 17
89:4, 9, 21
90:16 91:7, 11,
25 92:3, 6, 23
93:2, 5, 21 94:4,
7 95:21 96:2,
12 97:2, 18, 25
98:8, 18, 23
99:9, 13 100:7,
16 101:12, 24
102:7, 14, 25
103:5, 17, 21, 24
104:5, 15 105:1,
12, 19 106:2, 14
107:3, 13, 19, 23
108:6, 12, 23
109:7, 12, 16, 21
110:1, 6, 17, 21
111:7, 10, 19
112:1, 20 113:6,
18, 23 114:7, 13,
18 115:1, 4, 9
116:4, 12, 19
117:2, 19 118:3,
8, 15, 20, 22
119:4, 19
120:25 121:5,
15 122:4, 9, 14,
21, 25 123:7, 15,
18 124:1, 4
Singleton 2:7
sit 8:22
site 76:5 84:1,
3
sitting 8:20
44:2 87:6 114:2
situation 45:10
92:19
size 25:12
32:11, 12
skin 39:20 48:8
skirt 89:15
slapping 92:20
slightly 19:14
small 22:5
soft 116:11, 14,
16, 17, 20
sold 10:20
solely 106:4

<p>solemn 4:14 Solicitor 89:8 solution 97:16 sophisticated 97:16 sorry 16:10 19:23 20:17 21:8 23:18 25:9, 14 42:6 43:21, 25 52:21 84:13 86:3 91:25 92:1 93:14 99:11 101:22 108:6 114:7 120:6 sort 14:12 16:24 18:9 34:4 35:6 36:17 37:23 41:4 49:13 54:5 64:3 77:15 81:4 83:6 84:25 86:7 89:16 90:7 93:6 100:12 104:16 105:2 116:2 121:8 sounds 57:21 source 14:1 102:18, 19 speak 12:9 30:24 speaking 29:15 30:14 36:5 114:4 specialist 42:3 specific 9:8, 17 13:10 14:18 25:24 80:16 123:9 specifically 30:22 37:7 64:19 123:19 spectrum 66:20 speculation 35:24 spent 13:5 spoke 20:13 22:22 31:17 32:18 spoken 31:8, 24 spot 38:25 staff 8:23 11:16 24:24</p>	<p>36:21 59:2 61:13 62:1 Stage 6:21 10:25 11:2 30:22 53:19 81:11 94:8, 9, 10, 14, 21 97:5 105:15, 22 118:20, 21 121:4, 7, 9, 11, 13, 18, 19, 21 122:2, 3, 7, 18 stake 96:24 stands 8:5 start 36:11 108:13, 16 109:1 started 81:22 116:8 121:8 starting 60:15 66:3 100:2 104:8 117:13 starts 53:1 statements 125:8 station 38:9 stations 77:7 status 69:15, 17, 19 stay 36:19 37:12 40:14 staying 88:24 Steering 6:16, 22 7:6, 14 8:3 9:12 11:23 37:2, 8, 13 51:5, 18 52:10 53:9 55:8 84:8 86:12 88:18 90:8 97:3 105:13 119:6 121:6 123:4, 24 Stenographer/Tra nscriptionist 2:11 stenographically 125:10 step 8:19 42:1 56:22 90:1 95:14 107:11 116:23 step-in 98:24 99:3 stepped 99:8 stepping 43:3 100:4 103:15</p>	<p>steps 87:24 89:20 96:17 98:18 Steve 23:20 stick 88:21 sticking 54:5 stop 100:18 108:15 113:14 stopped 116:8 Street 38:12, 14 59:18 81:18 streets 59:15 stress 27:17, 23 28:14 strictly 89:1 structured 45:1 structuring 44:25 101:21 stuck 75:17 Study 3:6 20:16, 20, 21, 23, 25 21:3 stuff 113:20 subcontractors 42:8 subject 122:22 submit 70:9 74:5 substantial 42:17 44:21 65:16 71:1 80:22 83:9 86:7 95:23 115:14, 15 successful 45:6 112:14 sudden 35:12 81:20 84:2 101:4 104:7 sufficiency 75:11 sufficient 44:4, 14 46:5 106:20 suggest 31:5 suggested 66:1 suggestion 116:11 summary 119:24 support 18:16 61:19 supposed 38:9 80:23 surprised 111:11</p>	<p>Swail 97:4, 16 98:12 105:14 swap 102:9, 13 105:11 118:5 sweet 38:25 switching 111:21 syndicate 10:9, 11, 14 system 15:15 17:5 38:3, 16 58:15 59:11 114:11, 14 115:7, 17, 18, 25 116:1, 25 123:6, 22, 24 < T > table 114:2 takes 98:19, 22 talk 49:15 119:9 talked 37:1 talking 14:14 19:1 40:3 64:1 97:6 115:7 120:6, 8, 10 target 21:22 22:1 36:16 37:5, 16 38:18 54:13, 16 tasked 41:19 tax 18:8, 20 team 11:9 23:7 74:8, 9 teams 51:11, 12, 13 technical 51:13 55:5 74:6, 8, 12 96:4 102:23 103:3, 5, 16, 17, 22 105:4, 5 107:16 123:8 Technician 2:12 tend 5:21, 22 tension 94:10, 12, 18 term 10:22 58:14 120:7 terms 14:15 18:10 23:25 24:7 33:11 34:5 35:4 39:3 43:3 49:9, 22 51:17, 21 56:2</p>	<p>62:17 64:25 65:21 69:13 72:19 79:24 81:25 87:25 88:25 89:20 101:20 105:24 108:3, 10, 19 109:20 119:22 120:10 tests 27:17, 23 28:14 theoretically 80:7 thing 20:18 38:8 39:16 81:21 114:22 things 7:13 10:17 14:6 15:9, 10, 23 20:12 25:8 28:2 30:14 31:15 33:19 37:20 38:15, 18 45:2 100:1 thinking 106:19 third 26:11 29:5 93:13 thought 27:18 39:23 40:8 75:16, 24 thoughts 75:4 threshold 112:25 tied 47:21 time 4:19 16:17 17:9, 15, 21, 22 18:14, 25 21:5, 18 23:12, 17 24:2, 12, 17 25:20 26:5, 21 27:2, 6 40:6 43:14 45:18 54:12, 15 56:23 57:2, 5 62:7, 13, 21, 24 63:19 67:19, 20 68:9 73:19 74:25 83:5 84:25 86:15, 24 89:21 92:7, 11, 16 93:7, 13 97:20 99:7 108:2, 8, 17, 21 109:16 112:22 113:17, 25 114:15</p>
---	---	--	---	--

<p>116:7 119:7 125:6, 9 timeline 59:4 timelines 45:2 times 42:18 92:25 93:6, 12 101:16 109:14, 15 timing 10:16 today 4:9 44:3 122:12, 24 today's 4:13 told 62:12 75:15 76:14 92:8 99:20 tons 77:25 78:1 top 15:14 22:8 23:13 total 46:22 totalled 14:21 touch 41:20 touched 122:13 track 94:15 103:9 trade-off 32:14 39:23 trains 94:20 112:12, 21 117:16 transaction 22:14, 21 30:8 transcribed 4:22 125:11 transcript 4:23 5:2, 12, 13, 16 8:2 43:22 125:13 transcripts 5:6 transfer 39:10, 17 66:16 transferring 46:20 Transit 3:5 7:11, 16, 22, 24 12:16 16:12 17:4, 5, 11 18:6, 7, 9, 14 20:24 21:2 25:18 30:16, 23 43:22 52:15 58:23 59:11, 16 116:1 transition 7:22 19:15 115:20, 24 116:2</p>	<p>Transportation 17:18 60:9, 23 83:23 84:13 Treasurer 6:13 9:22 10:4 11:4, 16 97:24 Treasury 98:10 trial 6:1 111:22, 24 112:3, 9 113:5, 16, 22 114:4, 5, 12, 14 115:8, 16 123:2, 3, 14, 17, 20 trouble 123:13 true 125:12 trying 39:9, 10 67:13 85:21 116:25 119:7 Tunnel 3:5 16:12 17:11 20:25 21:2 31:13 38:4 39:14 40:2, 7, 23 67:21 77:2 turn 56:24 turned 41:8 49:11 64:15 twelve 70:24 type 17:2 123:9 types 28:2 37:20 38:17 56:15 75:25 104:23 120:20 typical 10:3 typically 33:15 55:11, 13 70:19 typos 5:12</p> <p>< U > U/T 3:19 20:9 Uhm-hmm 78:18 ultimately 66:4 85:10 underneath 38:10, 13 understand 6:12 15:2 16:2 28:23 30:14 52:24 59:2 84:19 93:15 102:4, 14, 15 103:3 111:16 115:23 122:6 understanding 28:18 34:10</p>	<p>76:9, 19 84:21 100:11 110:10 120:16 Understood 30:20 77:11 95:23 110:23 undertake 27:9 63:16 undertaken 3:12 37:18 UNDERTAKINGS 3:17 undertook 17:8 underway 87:23 update 65:11 123:2 upsides 47:10, 14 Urquhart 2:7 utilized 85:15</p> <p>< V > vacuum 61:11 vague 86:8 valuable 56:20 value 16:14 19:10 31:12 39:9 51:6 56:12 69:2 82:1, 2, 9 95:19 valued 39:15 values 83:17 variation 119:8 variations 15:4 variety 29:23 various 29:1 46:17 110:7 veered 87:20 vehicles 16:21 17:23 30:11 123:5 verify 71:17 VERITEXT 125:22 versus 26:25 82:1, 7 105:5 Videoconferenci ng 1:15 view 80:18 81:14 views 107:11 Virtual 2:12 Vogel 2:8 volume 78:3</p>	<p>vote 21:11, 24</p> <p>< W > walk 9:2 32:18 70:17 104:16 wanted 27:19 48:16 52:1 68:15 71:10 77:5 106:7 Wardle 2:7 23:14, 19 57:22 58:1, 5 89:3, 13 92:24 102:3, 8 105:10 119:25 120:6, 14 124:3, 5 Watson 26:25 ways 26:19 35:17 45:18 67:13 weaken 88:20 website 5:3 week 116:6, 24 weekends 117:16 weekly 109:3 weeks 114:21 winning 50:9 76:14 witness 4:11 5:18, 21, 24 120:14 witnesses 89:6 won 74:11 wondering 53:25 110:20 work 11:17 30:6, 15 37:4, 17 60:6 61:21 68:17 70:4 76:23, 24 80:9, 12 94:24 95:5 99:21 116:25 worked 18:3 26:10 30:21 32:9 47:3, 4 50:23, 24 54:24 55:1 working 45:11, 17 68:1 107:5 works 24:13 45:24 world 106:23 worth 15:3</p>	<p>19:1 39:11, 25 writ 41:12</p> <p>< Y > yeah 56:7 97:25 98:20, 22 118:11 year 24:21 34:24</p> <p>< Z > Zoom 1:15</p>
---	--	---	--	--