

**SCHEDULE 7**

**LANDS**

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**APPENDIX 7A DESCRIPTION OF LANDS AND ENCUMBRANCES**

## SCHEDULE 7

### LANDS

#### 1. DEFINITIONS

In this Schedule, in addition to terms defined in Schedule 1 to this Agreement:

**“Charge”** means any charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim or encumbrance of any nature whatsoever, including any claims of the Workers’ Compensation Board, Canada Revenue Agency, Employment Standards Branch or other Governmental Authority;

**“Encumbrances”** means those Charges against title to the Lands described in the land title searches attached as Appendix 7A [Description of Lands and Encumbrances] and any additional Charges against the Lands permitted under this Schedule;

**“Ground Lease”** means the ground lease dated April 6, 2017 between the City, as landlord, and the Province, as tenant, as such lease may be amended, restated, modified, extended or renewed from time to time;

**“Ground Lease Term”** has the meaning given to “Term” in the Ground Lease;

**“Landlord”** means the landlord under the Ground Lease, currently the City;

**“Lands”** means the real property interests described in Appendix 7A; and

**“Licence”** has the meaning set out in Section 2.1(a) of this Schedule.

#### 2. PROVINCE’S OBLIGATIONS AND REPRESENTATIONS

##### 2.1 Grant of Licence Over Site

- (a) From July 4, 2018 until the later of:
  - (1) the Termination Date; and
  - (2) the date the Province no longer requires Project Co to provide the transitional services described in Section 14.3(a) of the Agreement,

the Province hereby grants, and will continuously, until the applicable date above, grant or cause to be granted to Project Co a non-exclusive licence of use and access to, on and over the Site and the Facility to the extent required by Project Co to allow Project Co to perform the Design, the Construction and the Services (the **“Licence”**).

- (b) In consideration for the licence granted in Section 2.1(a), Project Co will perform the obligations described in Section 4.1 of the Agreement subject to and in accordance with the Agreement.
- (c) Project Co may for the same purposes described in Section 2.1(a), grant sub-licences to any Project Co Person, provided that any such grant will be subject to, and terminate upon, termination of the Licence.

## 2.2 Terms Affecting Licence Grant

Without limiting the other provisions of this Schedule and this Agreement, the following terms and conditions apply to the Licence:

- (a) no legal demise or other interest in land, and no interest in the Facility or any other improvements, is granted to Project Co or created by this Agreement;
- (b) the Licence is non-exclusive and no right to exclusive possession of the Lands or the Facility is granted to Project Co;
- (c) Project Co's rights are subject to the Encumbrances and the Ground Lease; and
- (d) subject to Section [6.10] of Schedule 2 [Design and Construction Protocols], the Province will be entitled at any time and from time to time to grant to Province Persons and any other Persons, including contractors and the general public, access to the Lands and the Facility.

## 2.3 Property Taxes

The Province will be responsible for property taxes (if any), or payments in lieu of property taxes, payable in respect of the Lands and the Facility, or the occupation thereof by the Province, Project Co or any Project Contractor or Sub-Contractor in accordance with and subject to the terms of the Ground Lease.

## 3. PROJECT CO'S OBLIGATIONS AND ACKNOWLEDGMENTS

### 3.1 "As Is Where Is"

Subject to the provisions of Section 4.1 of this Schedule, Project Co accepts the Lands comprising the Site and the Licence on an "as is, where is" basis, and acknowledges that the Province's interest in the Lands is a leasehold interest pursuant to the Ground Lease.

### 3.2 Encumbrances

- (a) Project Co acknowledges that it has reviewed the Encumbrances in effect as of the Effective Date, and Project Co will fully and punctually observe and perform (to the same extent as if Project Co were the owner of the Lands and bound by the Encumbrances) any limitations, restrictions, obligations, liabilities and other terms and conditions set out in the Encumbrances and Project Co assumes all risks arising therefrom. Project Co will fully and punctually observe and perform all of the terms and conditions of any interest included in the Lands and any Encumbrance. The Province may without restriction modify, add or remove any Encumbrances, provided that the foregoing will not limit Project Co's entitlements under the Agreement if such modification, addition or removal results in a Change.
- (b) Project Co acknowledges that the City intends to create a right of way over the new sidewalk being constructed by Project Co along Trethewey Street. This right of way will become an Encumbrance on its creation and will not give rise to a Change.
- (c) Notwithstanding the foregoing, Project Co's obligation to observe and perform limitations, restrictions, obligations, liabilities and other terms and conditions set out in the Encumbrances is subject to:

- (1) Project Co being legally capable of performing such limitations, restrictions, obligations, liabilities and other terms and conditions for or on behalf of the Province; and
- (2) Project Co being relieved from such obligation to the extent that the limitations, restrictions, obligations, liabilities and other terms and conditions set out in the Encumbrances are obligations for which the Province is otherwise responsible under this Agreement.

### **3.3 Project Co Not To Encumber**

Project Co will not, without the consent of the Province:

- (a) grant or permit any Charge affecting or against the Lands or the Facility; or
- (b) do or omit to do, or cause, suffer or permit to be done or omitted to be done by any Project Co Person anything that would result in any Charge against or affecting the Lands, the Facility or any asset, matter or thing that may be required to be delivered or transferred to the Province on the Termination Date pursuant to Section 14.2 (Transfer to the Province of Assets, Contracts, etc.) of this Agreement,

and will at its own expense promptly discharge and remove or cause to be discharged and removed any such encumbrance.

### **3.4 No Restriction on Province Use or Development**

Project Co acknowledges that the Province may from time to time without restriction use, develop or re-develop, or permit the use, development or re-development of, the Lands, the Facility or any portion thereof (including by way of subdivision) for any purpose and by any Person. To the extent such use, development or re-development adversely interferes with the Licence or adversely interferes with Project Co's ability to carry out the Design, the Construction and the Services, the Province will, to address such interference, initiate a Change.

### **3.5 No Registration**

Project Co will not register in any land title office this Agreement, the Licence or any instrument, claim or notice in respect of the Licence or any other rights of Project Co under this Agreement.

### **3.6 Builders Liens**

Project Co will, at its own cost and expense, cause any and all builders liens and other liens and claims of lien for labour, services or materials furnished or alleged to have been furnished with respect to the Design, the Construction or the Services that are registered against or otherwise affect the Lands or the Facility or any part thereof, to be paid, satisfied, released or vacated forthwith after the Province has sent Project Co written notice of any such lien or claim. If there is a bona fide dispute of the validity or correctness of any such lien or claim, Project Co will be entitled to defend against the lien or claim in any proceedings if Project Co first:

- (a) pays into Court, or provides sufficient security for, the amount claimed and costs as the Court may direct, as may be required to obtain a Court Order for the discharge of such lien or claim from title to the Lands, and obtains such discharge and registers such discharge in the Land Title Office to cancel such lien; or
- (b) provides such other reasonable security in respect of such lien or claim as the Province may in writing, and in its discretion, approve.

### **3.7 Title to Improvements**

Project Co will not acquire any property interest in or title to the Lands or the Facility or any other improvements to the Lands. As between Project Co and the Province, title to and ownership of the Facility and all other improvements to the Lands will at all times during the Ground Lease Term be vested in the Province in accordance with and subject to the terms and conditions of the Ground Lease.

## **4. HAZARDOUS SUBSTANCES**

### **4.1 Responsibility**

Notwithstanding any other provision of this Agreement or this Schedule, Project Co will not be responsible for any Hazardous Substances in, on, below or adjacent to the Lands or any cost, expense or claim arising therefrom, other than:

- (a) any Hazardous Substances brought onto, or adjacent to, the Lands by Project Co or any Project Co Person during the Term; and
- (b) those Hazardous Substances for which Project Co has agreed to accept responsibility in Schedule 3 [Design and Construction Specifications].

### **4.2 Restrictions on Use**

Unless otherwise expressly required or permitted under this Agreement, Project Co will not install, use or store on the Lands or adjacent property any materials, equipment or apparatus, the installation, use or storage of which is likely to cause or in fact causes the generation, accumulation or migration of any Hazardous Substance in contravention of any applicable Laws. Without limiting the generality of the foregoing, Project Co will not use the Lands to dispose of, handle or treat any Hazardous Substances, in a manner that would cause the Lands, or any adjacent property, to become a contaminated site under applicable Laws.

## **5. GROUND LEASE OBLIGATIONS**

### **5.1 Receipt of Ground Lease.**

Project Co acknowledges and agrees that it has received a copy of the Ground Lease.

### **5.2 Interest in Lands.**

Project Co acknowledges and agrees that it has no greater interest and will have no greater interest in the Lands than the Province under the Ground Lease.

### **5.3 General Ground Lease Obligations.**

Project Co shall not do or omit to do any act in or around the Lands which would cause a breach of the Province's obligations or otherwise cause any liability of the Province under the Ground Lease. Project Co and the Province agree that nothing in this Section 5.3 shall be interpreted so as to impose any obligations on Project Co which are in addition to its obligations described elsewhere in this Agreement. Accordingly, if any obligation required to be performed by Project Co pursuant to this Section 5.3 conflicts or is otherwise inconsistent with any obligation of Project Co elsewhere in this Agreement, the provisions described elsewhere in this Agreement shall prevail to the extent of such conflict or inconsistency.

**5.4 Specific Ground Lease Obligations.**

Project Co shall perform the following obligations of the Province under the Ground Lease:

- (a) obtain and maintain the insurance required pursuant to section 5.3 of the Ground Lease; and
- (b) comply with the covenants given by the Province pursuant to the first sentence of section 20.1 of the Ground Lease with respect to Contaminants (as defined in the Ground Lease).

Project Co and the Province agree that the obligations set out in this Section 5.4 are in addition to Project Co's obligations described elsewhere in this Agreement, and accordingly, Project Co agrees to carry out the same subject to and in accordance with the terms of the Ground Lease for so long as this Agreement remains in effect.

**5.5 Indemnity.**

Project Co shall indemnify the Province against any amounts payable by the Province to the Landlord pursuant to the Ground Lease as a result of any:

- (a) negligent act or omission of Project Co;
- (b) wilful misconduct of Project Co; or
- (c) non-compliance by Project Co with any of the provisions of this Agreement, including this Schedule 7.

**5.6 Landlord Obligations.**

Project Co agrees that it may not rely on any Landlord obligation under the Ground Lease and that the Province is not obliged to enforce any of its rights under the Ground Lease.

**5.7 No Right to Ground Lease Payments.**

Project Co acknowledges and agrees that it will have no interest in the payments described under section 2.6 of the Ground Lease.

**5.8 No Communication.**

Project Co shall not contact the Landlord with respect to matters concerning the Ground Lease without having first received the Province's prior written consent.

**APPENDIX 7A**

**DESCRIPTION OF LANDS AND ENCUMBRANCES**

[Attached.]