

PROJECT AGREEMENT
TO BUILD AND FINANCE
THE GREATER TORONTO AREA YOUTH CENTRE

MARCH 20, 2007

CONFIDENTIAL

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- Schedule 1 - Form of Construction Contract
- Schedule 2 - Form of Limited Assignment of Construction Contract
- Schedule 3 - Form of Lender's Direct Agreement
- Schedule 4 - **[DELETED]**

PROJECT AGREEMENT

THIS PROJECT AGREEMENT is made as of the 20th day of March, 2007

BETWEEN:

**ONTARIO INFRASTRUCTURE PROJECTS
CORPORATION, as agent for Her Majesty The Queen
in Right of Ontario as represented by the Minister of Public
Infrastructure Renewal
("OIPC")**

AND:

**BIRD CONSTRUCTION COMPANY, a limited partnership created under the laws of the
Province of Ontario represented by its general partner, BIRD MANAGEMENT LTD.**

("Contractor")

AND:

BIRD GTAYC INC., a corporation incorporated under the laws of the Province of Ontario

("Project Co")

WHEREAS:

- A. Her Majesty The Queen in Right of Ontario, as represented by the Minister of Public Infrastructure Renewal ("**PIR**"), as the owner of the Project Lands, with the assistance of OIPC and MCYS, wishes to procure the financing and construction of the GTAYC in Brampton, Ontario in order to create an integrated youth justice centre that balances the best interests of youth with community safety.
- B. PIR, together with OIPC and MCYS, issued the Request for Proposals for the financing and construction of the GTAYC, and Contractor submitted its proposal (the "**RFP Submission**") on or before the closing date for submissions under the Request for Proposals (the "**Submission Date**").
- C. Contractor and Project Co were selected as the successful Preferred Proponent under and as defined in the Request for Proposals and OIPC, Contractor and Project Co wish to enter into this Project Agreement, which sets out the terms and conditions upon which Contractor and Project Co shall deliver the Project.
- D. The overriding priority of OIPC in entering into and implementing the Project Agreement is to procure infrastructure for use by MCYS that will balance the best interests of the youth who will occupy the GTAYC with community safety.

- E. The construction of the GTAYC will proceed as an alternative financing and procurement project under PIR's *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in PIR's *Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario's Public Sector* (the "**IPFP Framework**").
- F. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
1. The public interest is paramount.
 2. Value for money must be demonstrable.
 3. Appropriate public control/ownership must be preserved.
 4. Accountability must be maintained.
 5. All processes must be fair, transparent and efficient.
- G. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of public assets will be preserved.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms defined in this Section shall have, for all purposes of this Project Agreement the following meanings, unless the context expressly or by necessary implication otherwise requires:

- (a) "**Additional Lender Due Diligence**" has the meaning given to it in Section 2.4(b).
- (b) "**Affiliate**" means an "affiliate" as that term is used in the *Business Corporations Act* (Ontario).
- (c) "**Applicable Law**" means:
 - (i) any applicable statute or proclamation or any delegated or subordinate legislation including regulations;
 - (ii) any applicable judgment of a relevant court of law which is a binding precedent in the Province of Ontario;
 - (iii) any Authority Requirement; and

- (iv) any applicable judgment of a relevant court of law, board, arbitrator or administrative agency,

in each case in force in the Province of Ontario, or otherwise binding on Contracting Parties, PIR, OIPC or MCYS and, in particular, shall include the *Youth Criminal Justice Act* (Canada).

- (d) "**Article**" and "**Section**" mean and refer to the specified article and section or subsection of this Project Agreement.
- (e) "**Authority Requirement**" means any order, direction, directive, request for information, policy, guideline or rule of or by any Governmental Authority.
- (f) "**Bid Security**" means the bid bond delivered by Contractor with its RFP Submission in response to the Request for Proposals.
- (g) "**Business Day**" has the meaning given to it in the Construction Contract.
- (h) "**Confidant**" has the meaning given to it in Section 5.5(a).
- (i) "**Confidential Information**" means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of this Project Agreement, which is clearly marked as confidential or proprietary when first disclosed, including information disclosed orally if it is identified as confidential at the time of disclosure and further confirmed in writing as confidential within fourteen (14) days of disclosure.
- (j) "**Construction Contract**" means the Guaranteed Price Contract entered into by Project Co and Contractor pursuant to the terms of this Project Agreement, the form of which is attached as Schedule 1 – Construction Contract.
- (k) "**Consultant**" has the meaning given to it in the Construction Contract.
- (l) "**Contract Documents**" has the meaning given to it in the Construction Contract.
- (m) "**Contracting Parties**" means collectively Contractor and Project Co.
- (n) "**Contracting Parties Conditions**" has the meaning given to it in Section 2.6.
- (o) "**Cost of the Financing**" has the meaning given to it in the Construction Contract.
- (p) "**Cost of the Work**" has the meaning given to it in the Construction Contract.
- (q) "**Disclosing Parties**" has the meaning given to it in Section 5.2(c) and "**Disclosing Party**" means any one of them.
- (r) "**Financial Close**" means the date of execution and delivery of the Implementing Agreements and the Lending Agreements.

- (s) "**Financial Close Target Date**" means April 27, 2007, as such date may be extended in accordance with the provisions of this Project Agreement.
- (t) **[DELETED]**
- (u) "**Financing**" has the meaning given to it in the Construction Contract.
- (v) "**FIPPA**" means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- (w) "**General Partner**" means Bird Management Ltd., its successors and assigns.
- (x) "**Governmental Authority**" means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, agent, department, or branch of any of the foregoing, having legal jurisdiction in any way over the Project or any aspect of the performance of this Project Agreement or any of the Implementing Agreements, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- (y) "**GTAYC**" means the Greater Toronto Area Youth Centre.
- (z) "**Guaranteed Price**" has the meaning given to it in the Construction Contract.
- (aa) "**Implementing Agreements**" means the Construction Contract, the Limited Assignment of the Construction Contract, the Lender's Direct Agreement and all other documents and agreements delivered by the Parties at Financial Close under Section 4.1, excluding the Lending Agreements.
- (bb) "**Interest Reference Rate**" means the reference benchmark rate of interest identified in **[DELETED]** and used in the calculation of the Project Debt Interest Cost, and, for greater clarity, is the base rate of interest exclusive of any stated or imbedded credit spread or fees.
- (cc) "**Lender**" has the meaning given to it in the Lender's Direct Agreement.
- (dd) "**Lender Conditions**" has the meaning given to it in Section 2.4(b).
- (ee) "**Lender's Direct Agreement**" means the agreement to be entered into by OIPC, Lender and Contracting Parties pursuant to the terms of this Project Agreement, the form of which is attached as Schedule 3 – Lender's Direct Agreement.
- (ff) "**Lending Agreements**" has the meaning given to it in the Lender's Direct Agreement.

- (gg) "**Limited Assignment of Construction Contract**" means the limited assignment to OIPC of the Construction Contract by Project Co to be entered into pursuant to the terms of this Project Agreement, the form of which is attached as Schedule 2 – Limited Assignment of Construction Contract.
- (hh) "**MCYS**" means Her Majesty The Queen in Right of Ontario as represented by the Minister of Children and Youth Services, and includes any agent thereof or any successors thereto or Persons exercising delegated power under the Minister's authority.
- (ii) "**Notice**" has the meaning given to it in Section 7.1.
- (jj) "**OIPC Conditions**" has the meaning given to it in Section 2.5.
- (kk) "**Party**" means any of OIPC, Contractor or Project Co and "**Parties**" means all of them.
- (ll) "**Person**" means any individual, corporation, limited or unlimited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization or Governmental Authority.
- (mm) "**PIR**" includes successors or Persons exercising delegated power under the Minister's authority.
- (nn) "**Project**" has the meaning given to it in the Construction Contract.
- (oo) "**Project Agreement**" means this project agreement and all schedules hereto.
- (pp) "**Project Co**" means Bird GTAYC Inc.
- (qq) "**Project Debt**" has the meaning given to it in Appendix 8 – Supplementary RFP Submission Form.
- (rr) "**Project Debt Interest Cost**" has the meaning given to it in Appendix 8 – Supplementary RFP Submission Form
- (ss) "**Project Lands**" means the lands located in the City of Brampton, Ontario at 205 McLaughlin Road South as described in the Contract Documents as the Place of the Work.
- (tt) "**Proprietor**" has the meaning given to it in Section 5.5.
- (uu) "**Province**" means Her Majesty The Queen in Right of Ontario.
- (vv) "**Request for Proposals**" means the Request for Proposals jointly issued by PIR, OIPC and MCYS for the delivery of the Project dated August 24, 2006.
- (ww) "**RFP Submission**" has the meaning given to it in Recital B.

- (xx) "**Schedule**" means a schedule to this Project Agreement.
- (yy) "**Submission Date**" has the meaning given to it in Recital B.
- (zz) "**Total Completion**" has the meaning given to it in the Construction Contract.

1.2 Schedules

This Project Agreement comprises this executed agreement and the following Schedules, all of which are hereby incorporated by reference into and form part of this Project Agreement:

Schedule 1	Form of Construction Contract;
Schedule 2	Form of Limited Assignment of Construction Contract;
Schedule 3	Form of Lender's Direct Agreement; and
Schedule 4	[DELETED]

1.3 Interpretation

This Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The tables of contents, headings, marginal notes and references to them in this Project Agreement are for convenience of reference only, shall not constitute a part of this Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Project Agreement.
- (b) The Schedules to this Project Agreement are an integral part of this Project Agreement and a reference to this Project Agreement includes a reference to the Schedules.
- (c) All references in this Project Agreement to a Schedule shall be to a Schedule of this Project Agreement.
- (d) All capitalized terms used in a Schedule shall have the meanings given to such terms in the Schedule or, if not defined therein, in the Project Agreement.
- (e) Words importing Persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of Persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a Person in such capacity.
- (f) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (g) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Project Agreement concerning

amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.

- (h) References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- (i) References to a statute shall include all regulations, by-laws, decrees, ordinances and orders made under or pursuant to the statute.
- (j) References to Persons shall include their successors and assigns. References to a public organization shall include its successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- (k) A reference in this Project Agreement or in any Implementing Agreement to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- (l) The words in this Project Agreement or in any Implementing Agreement shall bear their natural meaning.
- (m) Each of Contracting Parties' and OIPC's respective obligations shall be construed as separate obligations owed to the other.
- (n) References containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Project Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (o) In construing this Project Agreement or any Implementing Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of this Project Agreement or any Implementing Agreement and, accordingly, general words introduced or followed by the word

"other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (p) Where this Project Agreement or any Implementing Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (q) Where this Project Agreement or any Implementing Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of days before a stipulated date or event or "by" a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (r) Where this Project Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (s) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (t) Unless otherwise indicated, time periods will be strictly construed.
- (u) Whenever the terms "will" or "shall" are used in this Project Agreement or any Implementing Agreement in relation to Contracting Parties or OIPC they shall be construed and interpreted as synonymous and to read "Contracting Parties shall" or "OIPC shall" as the case may be.
- (v) Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- (w) Terms not defined herein and used in this Project Agreement or any Implementing Agreement which have a technical meaning commonly understood by the construction sector in Ontario will be construed as having that meaning unless the context otherwise requires.
- (x) Any term defined in Section 1.1 Definitions herein as having the meaning given to it in the Construction Contract, the Limited Assignment of Construction Contract or the Lender's Direct Agreement shall have the meaning given to it in the form of such agreement appended hereto as Schedules 1, 2 and 3 respectively; and upon the execution of any such agreement, the defined term in Section 1.1 Definitions herein will have the meaning given to it in the executed version of such agreement whether or not such definition has changed in the executed version.

ARTICLE 2 - FINANCIAL CLOSE

2.1 Effective Date

The provisions of this Project Agreement other than the covenant to complete the Project in Article 4 come into effect on the date of this Project Agreement. Such covenant to complete the Project and all Implementing Agreements will come into effect only on Financial Close.

2.2 Bid Security

OIPC and Contracting Parties acknowledge that the Bid Security delivered by Contracting Parties with its RFP Submission under the Request for Proposals has been delivered to OIPC and is now held by OIPC pursuant to the provisions of this Article 2 .

2.3 Financial Close

OIPC agrees to execute and deliver all of the Implementing Agreements on or before the Financial Close Target Date. Contracting Parties agree to execute and deliver all of the Implementing Agreements and agree to have completed the Financing and to have entered into the Lending Agreements on or before the Financial Close Target Date.

2.4 Forfeiture of Bid Security

- (a) Subject to Section 2.4(b), if Contracting Parties or Lender fail to achieve through no default of OIPC, Financial Close by the Financial Close Target Date (as such date may be extended by OIPC in its sole and absolute discretion upon the request of Project Co) other than as a result of (i) the failure of OIPC to satisfy or waive the condition in Sections 2.5(a)(ii) or 2.5(a)(vii); (ii) the failure of Contracting Parties to satisfy or waive the Contracting Parties Conditions; or (iii) as a result of circumstances beyond the reasonable control of the Contracting Parties, but not including either (A) lack of funds; or (B) subject to Section 2.4(b), the failure to complete the Financing, OIPC will be entitled at any time thereafter to terminate this Agreement and to draw from the Bid Security and to retain the lesser of: (a) the full amount of the Bid Security, and (b) the difference between the Guaranteed Price and the price that OIPC is able to obtain from another proponent, together with all costs reasonably incurred by OIPC to enter into binding agreements with such other proponent. The Parties agree that the amounts so drawn constitute liquidated damages and not a penalty. Such liquidated damages represent a genuine and reasonable pre-estimate of the damages that OIPC will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by OIPC as a result of Contracting Parties not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not OIPC incurs or mitigates its damages, and that OIPC shall not have any obligation to mitigate any such damages.
- (b) The Parties acknowledge that arrangements with respect to Financing may be expressly conditional on the Lender being reasonably satisfied with new information

or new reports that arise or are prepared after the RFP Closing Deadline but before the Financial Close Target Date (collectively, the "**Additional Lender Due Diligence**") relating to the design, environmental or technical aspects of the Work but expressly excluding satisfaction with the attached forms of Implementing Agreements or any other conditions or matters (the "**Lender Conditions**"). Project Co will use diligent efforts to satisfy the Lender Conditions and shall keep OIPC advised of the status of such efforts. Upon request, and in any event at least fifteen (15) days prior to the Financial Close Target Date, Project Co shall provide a written report to OIPC detailing the status of the Lender's progress in satisfying the Lender Conditions. Project Co shall notify OIPC promptly if at any time it becomes aware the Lender Conditions will not be satisfied or waived and so long as OIPC is satisfied in its sole and absolute discretion that the Lender Conditions have not been satisfied or waived and that as a direct result thereof the Financing will not be completed, either OIPC or Project Co may terminate this Project Agreement and OIPC will return the Bid Security to Project Co. If OIPC believes that the Lender Conditions will not be satisfied and that as a result thereof the Financing will not be completed, OIPC may terminate this Project Agreement whereupon OIPC will return the Bid Security to Project Co. For the purposes of the foregoing and for greater certainty, the Lender Conditions shall be deemed satisfied on the date which is fifteen (15) days prior to the Financial Close Target Date unless the Lender and Project Co can demonstrate to the reasonable satisfaction of OIPC, that such Additional Lender Due Diligence has revealed facts or circumstances not previously known to Project Co and/or the Lender which would or are reasonably likely to promptly result in a material increase in the Cost of the Financing.

2.5 OIPC Conditions

- (a) The execution and delivery of the Implementing Agreements by OIPC on the Financial Close Target Date is conditional upon the following:
 - (i) OIPC is satisfied, acting reasonably, with any changes to the attached forms of the Implementing Agreements and with the forms of any other Implementing Agreements, and the Implementing Agreements are executed and delivered to OIPC by Project Co, Contractor and Lender, as applicable;
 - (ii) OIPC has received the final approval from MCYS to proceed with the Project and to enter with the Contractor into the Implementing Agreements, in form and substance satisfactory to OIPC acting reasonably;
 - (iii) OIPC has received from each of the Contracting Parties a bring-down certificate confirming that their respective representations and warranties in Sections 3.1 and 3.2 continue to be true and correct in all material respects;
 - (iv) OIPC is satisfied, acting reasonably, that the Financing is in place and the Lending Agreements have been executed and delivered by Contracting Parties and Lender;

- (v) OIPC has received delivery of bonds required under the Construction Contract with OIPC and the Lender as obliges;-
- (vi) OIPC has received evidence of the insurance to be provided under the Construction Contract in form and substance satisfactory to OIPC acting reasonably; and
- (vii) OIPC is satisfied that all conditions and requirements of any Governmental Authority required to allow construction of the GTAYC to proceed have been or, in OIPC's sole and absolute discretion, can be obtained without any delay to the initiation of and the progress of construction of the GTAYC by Contractor,

(collectively, the "**OIPC Conditions**").

The OIPC Conditions are for the sole benefit of OIPC and may be waived in whole or in part by OIPC by written notice to Contracting Parties on or before the Financial Close Target Date.

- (b) Subject to Section 2.4(a), if OIPC has not satisfied or waived the OIPC Conditions, then OIPC may terminate this Agreement and promptly return the Bid Security to the Project Co and neither OIPC nor the Contracting Parties shall be liable to the other for any other damages, costs or losses resulting from the termination of this Agreement or for any expenses or costs incurred prior to or after the date of termination of this Agreement or related, directly or indirectly, to the Request for Proposals.

2.6 Contracting Parties Conditions

- (a) The execution and delivery of the Implementing Agreements by the Contracting Parties on the Financial Close Target Date is conditional upon the following:
 - (i) the Contracting Parties have received from OIPC a bring-down certificate confirming that its representations and warranties in Section 3.2 continue to be true and correct in all material respects; and
 - (ii) the Contracting Parties are satisfied that all conditions and requirements of any Governmental Authority required to allow construction of the Project to proceed including all building permits (other than those the Contractor is required to obtain under the Construction Contract), have been or, in the Contracting Parties' reasonable determination, can be obtained without any material delay to the initiation of and the progress of construction of the Project by Contractor,

(collectively, the "**Contracting Parties Conditions**").

The Contracting Parties Conditions are for the sole benefit of the Contracting Parties and may be waived in whole or in part by the Contracting Parties by written notice to OIPC on or before the Financial Close Target Date.

2.7 Project Debt Interest Cost Adjustment

Contracting Parties represent and warrant that the Project Debt Interest Cost as set out in the RFP Submission is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted on the date of Financial Close on the basis of the actual cost increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward of the Interest Reference Rate as at the date of Financial Close compared to the Interest Reference Rate as at the Submission Date of the RFP Submission.

2.8 Adjustment to Guaranteed Price

The Contracting Parties represent and warrant that the Guaranteed Price is Ninety Two Million, Eight Hundred and Fifty Five Thousand Dollars (\$92, 855, 000) and that Cost of the Financing and the Cost of the Work are calculated in a manner consistent in all material respects with the Financial Model. The Parties acknowledge that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 2.7 as at the date of Financial Close. The Parties further acknowledge that the Cost of the Work is subject to adjustment, where provided for, under any post-award addenda issued to Contracting Parties. The Parties acknowledge and agree that the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and final adjusted Cost of the Work as of the date of Financial Close.

[DELETED]

2.9 Ownership of Project Lands

Contracting Parties acknowledge that neither Contracting Parties nor the Lender shall, under the Project Agreement or any of the Implementing Agreements, acquire any interest in the Project Lands or the Project notwithstanding any provision therein to the contrary and that PIR shall at all times retain the fee simple interest in and the freehold title to the Project Lands and the Project, unencumbered by any interest of Contracting Parties or the Lender. Contracting Parties shall have access to the Project Lands and the Project under and subject to the limited license created in the Construction Contract.

2.10 Acknowledgement of OIPC Authority

Nothing in this Project Agreement or any of the Implementing Agreements including the Construction Contract shall in any way fetter the right, authority and discretion of OIPC in fulfilling its statutory or other functions under Applicable Law, and Contracting Parties acknowledge and agree that nothing in this Project Agreement or any of the Implementing Agreements including the Construction Contract shall preclude OIPC from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.1 Contractor Representations and Warranties

Contractor represents and warrants to OIPC that as of the date of this Project Agreement:

- (a) Contractor is a limited partnership validly existing and in good standing under the laws of the jurisdiction of its organization and there is no restriction or prohibition contained in the partnership agreement constituting the Contractor to limit the power and authority of the General Partner to own, lease and operate the Contractor's properties and assets, to carry on the Contractor's business as it is currently being conducted, and to enter into this Project Agreement and any Implementing Agreements and to perform the Contractor's obligations hereunder and thereunder
- (b) General Partner is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and any Implementing Agreements on behalf of the Contractor and to perform the Contractor's obligations hereunder and thereunder;
- (c) no steps or proceedings have been taken or are pending to supersede, repeal, or amend the partnership agreement creating the Contractor or the General Partner's constating documents, articles, by-laws or any shareholders agreement in a manner that would materially impair or limit the General Partner's ability to perform the obligations of the Contractor under this Project Agreement and the Implementing Agreements and they are in full force and effect as of the date hereof;
- (d) this Project Agreement and the Implementing Agreements (when executed and delivered) to which Contractor is a party have been duly authorized, executed, and delivered by General Partner on behalf of Contractor and constitute a legal, valid, and binding obligations of Contractor, enforceable against Contractor in accordance with their terms, subject only to:
 - (i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (ii) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (e) the authorization, execution, delivery, and performance by General Partner on behalf of Contractor of this Project Agreement and the Implementing Agreements to which

Contractor is a party does not violate or conflict with, or constitute a material default under:

- (i) the partnership agreement constating the Contractor or the constating or organizational documents or any unanimous shareholders agreement of the General Partner or similar rights agreement binding on Contractor or General Partner;
 - (ii) any Applicable Law; or
 - (iii) any covenant, contract, instrument or agreement to which Contractor or General Partner is a party or by which either or any of their properties or assets are bound or affected;
- (f) there are no actions, suits, proceedings, or investigations pending or threatened against Contractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Project Agreement and the Implementing Agreements to which Contractor is a party, and Contractor has no knowledge of any violation or default with respect to any order, writ, decision, injunction, or decree of any Governmental Authority or arbitral body that would result in any such materially adverse effect or impairment;
- (g) Contractor is able to meet its obligations as they generally become due;
- (h) Contractor is registered under Division V of Part IX of the *Excise Tax Act* (Canada); and
- (i) Contractor has, together with Project Co, secured the Financing and is in a position to implement the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing the financing for projects similar to the Project.

3.2 Project Co Representations and Warranties

Project Co represents and warrants to OIPC that as at the date of this Project Agreement:

- (a) Project Co is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and any Implementing Agreements to which it is a party and to perform its obligations hereunder and thereunder;

- (b) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles, by-laws or any shareholders agreement in a manner that would impair or limit its ability to perform its obligations under this Project Agreement and any Implementing Agreements to which it is a party and they are in full force and effect as of the date hereof;
- (c) this Project Agreement and any Implementing Agreements (when executed and delivered) to which it is a party have been duly authorized, executed, and delivered by Project Co and constitute a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with their terms, subject only to:
 - (i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (ii) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (d) the authorization, execution, delivery, and performance by Project Co of this Project Agreement and any Implementing Agreements to which it is a party does not and will not violate or conflict with, or constitute a default under:
 - (i) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Project Co;
 - (ii) any Applicable Law; or
 - (iii) any covenant, contract, instrument or agreement to which it is a party or by which it or any of its properties or assets is bound or affected;
- (e) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement and any Implementing Agreements to which it is a party, and Project Co has no knowledge of any violation or default with respect to any order, writ, decision, injunction, or decree of any Governmental Authority or arbitral body that could result in any such materially adverse effect or impairment;
- (f) Project Co is an Affiliate of Contractor;
- (g) Project Co is able to meet its obligations as they generally become due;

- (h) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada); and
- (i) Project Co has, together with Contractor, secured the Financing and is in a position to implement the Financing on or before the Financial Close Target Date subject to the satisfaction of reasonable conditions that are customary in securing the financing for projects similar to the Project.

3.3 OIPC Representations and Warranties

OIPC represents and warrants to Contracting Parties that as of the date of this Project Agreement:

- (a) this Project Agreement and the Implementing Agreements (when executed and delivered) to which OIPC is a party have been duly authorized, executed, and delivered by OIPC and constitute a legal, valid, and binding obligation of OIPC, enforceable against OIPC in accordance with their terms, subject only to general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments; and
- (b) the authorization, execution, delivery, and performance by OIPC of this Project Agreement and the Implementing Agreements to which OIPC is a Party does not and will not violate or conflict with, or constitute a default under any Applicable Law.

ARTICLE 4 - CONSTRUCTION AND FINANCE OBLIGATIONS

4.1 Project Co and Contractor Construction and Financing

The Parties agree that the legal relationship between them respecting the construction of the Project is as follows:

- (a) Project Co will enter into the Construction Contract in the capacity of "Owner" with the Contractor; and
- (b) Project Co, OIPC and Contractor will enter into the Limited Assignment of Construction Contract pursuant to which the Construction Contract will be assigned by Project Co to OIPC as "Owner" in accordance with the Limited Assignment of Construction Contract.

The Parties acknowledge and agree that no obligation arises under this Project Agreement for the construction of the Project and that Project Co has no obligation to supply services or materials for the construction of the Project. The Parties further acknowledge and agree that the only agreement under which the obligation for the construction of the Project arises is under the Construction Contract subject to the provisions of the Limited Assignment of Construction Contract, each of which are to be executed and delivered on Financial Close. Contracting Parties agree with OIPC to complete the Project in accordance with and subject to the provisions of the Construction Contract and the Financing and in furtherance of such agreement Contracting Parties agree, subject to the

Contracting Parties Conditions, to enter into and to cause Lender to enter into where applicable the following agreements and otherwise complete the following on Financial Close:

- (c) the execution and delivery of all Lending Agreements and the completion of all arrangements to implement the Financing;
- (d) the execution and delivery of the Construction Contract between Project Co in the capacity of "Owner" thereunder and Contractor;
- (e) the execution and delivery of the Limited Assignment of Construction Contract with OIPC and the Lender's Direct Agreement with OIPC and Lender;
- (f) the execution and delivery of a certificate confirming the representations and warranties in Sections 3.1 and 3.2; and
- (g) the execution and delivery of such other related and ancillary instruments, agreements and documents as are customary and are necessary to give effect to this transaction.

4.2 Early Works

Notwithstanding Section 2.1, immediately following Commercial Close the Contracting Parties may cause the Contractor to begin work under the Guaranteed Price Contract in accordance with the terms of the Guaranteed Price Contract. The Contractor shall provide all such evidence of insurance required to be provided under the Guaranteed Priced Contract, including a clearance certificate issued by the Workers Safety and Insurance Board, before beginning any work. If Financial Close does not take place on or before the Financial Close Target Date then, unless OIPC otherwise agrees, the Contractor shall (i) cease all operations under the Guaranteed Price Contract on the Financial Close Target Date; (ii) remove from the Place of the Work all of the Contractor's equipment leaving the Place of the Work in a safe and stable condition; and (iii) submit to OIPC, together with Project Co, an invoice for the value of the work performed together with complete drawings, test results, surveys and documentation to substantiate and describe the work. OIPC shall cause the Consultant to inspect the Work and materials submitted by the Contractor and within thirty (30) days after receipt of the Consultant's report, OIPC shall pay to the Contractor the amount determined by the Consultant to be the value to OIPC of the Work performed by the Contractor in complete satisfaction of all obligation or liability to Project Co or the Contractor in respect thereof.

ARTICLE 5 - COMMUNICATIONS PROTOCOL AND CONFIDENTIALITY

5.1 Communications Protocol

- (a) Contracting Parties shall not issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement or any matters related thereto, without the prior written consent of OIPC, in its sole and absolute discretion, provided that if a Contracting Party is a public

company it shall be entitled to make such disclosure as is required by Applicable Law subject to reasonable consultation with OIPC prior to such disclosure.

- (b) Contracting Parties shall, and shall ensure that their subcontractors, agents, Affiliates, employees, officers and directors, in each case, comply, at all times, with OIPC's, PIR's and/or MCYS' media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by OIPC, PIR and/or MCYS from time to time, provided that if any such Person is a public company it shall be entitled to make such disclosure as is required by Applicable Law subject to reasonable consultation with OIPC prior to such disclosure.
- (c) OIPC, either on its own or together with MCYS, propose to establish public information repository for the Project which may be website based as well as a hard copy document repository for purposes of communicating to the public information respecting the Project and the progress of the construction work. It is not intended that this information repository would include any information which falls within one of the exemptions under FIPPA although the information repository may also contain the redacted versions of the Project Agreement or any of the Implementing Agreements pursuant to Section 5.3 below. Other than in respect to such redacted publications, OIPC on its own or together with MCYS will establish a communications protocol in consultation with Contracting Parties for the development and management of the information repository.

5.2 FIPPA

- (a) OIPC and Contracting Parties acknowledge and agree that, subject only to removal of information that falls within one of the exemptions under FIPPA unless consented to by Contracting Parties under Section 17(3) of FIPPA, the Project Agreement and the Implementing Agreements are public documents that may be disclosed or published (including on websites) by OIPC.
- (b) Contracting Parties further acknowledge and agree that OIPC will be free to disclose any information, including the Project Agreement and the Implementing Agreements and any Confidential Information, to OIPC, MCYS and/or the Province and, subject to compliance with FIPPA, OIPC, MCYS and/or the Province will be free to use, disclose or publish (including on websites) the information on such terms and in such manner as OIPC, MCYS and/or the Province see fit.
- (c) For greater certainty, Contracting Parties acknowledge and agree that, subject only to the removal of any information pursuant to one of the exemptions under FIPPA, this Project Agreement or any of the Implementing Agreements, any contractual submissions or other records kept in accordance with this Project Agreement or any of the Implementing Agreements, any information related to the performance of Contracting Parties or any information derived from this Project Agreement or any of the Implementing Agreements, including Confidential Information, are public documents and information and, as such, may be disclosed by OIPC, PIR, MCYS and/or the Province (the "**Disclosing Parties**").

5.3 Redaction Publication

Prior to disclosing or publishing this Project Agreement or any of the Implementing Agreements the Disclosing Party shall provide notice to Contracting Parties (and Lender in respect to the Lender's Direct Agreement) and Contracting Parties (and Lender in respect to the Lender's Direct Agreement) shall have a period of thirty (30) days from receipt of such notice to identify any information contained in or relating to the Project Agreement, any of the Implementing Agreements and/or the Confidential Information which in the view of Contracting Parties may be refused disclosure pursuant to one of the exemptions under FIPPA together with the reasons why such information may be refused disclosure and FIPPA shall govern any disclosure.

5.4 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any Person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 5.4 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement or any of the Implementing Agreements.
- (b) Contracting Parties may:
 - (i) disclose in confidence to Lender and prospective lenders and their professional advisors such Confidential Information as is reasonably required by Lender in connection with the raising of finance for the construction of the GTAYC or which Contracting Parties are obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to Contracting Parties and their professional advisors, such Confidential Information as is necessary for the performance by Contracting Parties of Contracting Parties' obligations under this Project Agreement or any of the Implementing Agreements.
- (c) Contracting Parties acknowledge that OIPC, MCYS and/or the Province may use the Confidential Information of Contracting Parties for purposes not specific to the Project, but for other general governmental purposes, such as, among other things, development of the Province's alternate financing and procurement policies and framework.
- (d) Subject to the foregoing, neither Contracting Parties nor OIPC shall use, or directly or indirectly cause, authorize or permit any other Person to use, any Confidential Information of the other except for the purposes of this Project Agreement or any Implementing Agreement, as permitted by this Project Agreement or any Implementing Agreement or as authorized by the Disclosing Party in writing.

- (e) Each Party shall protect all Confidential Information of the Disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.

5.5 Exceptions

Information of a Party (the "**Proprietor**") will not be considered to be Confidential Information in the following circumstances:

- (a) the Proprietor advises the other Party in writing to whom the information has been disclosed (the "**Confidant**") that the information is not required to be treated as Confidential Information;
- (b) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
- (c) the information is a matter of public record or in the public domain;
- (d) the information was in the possession of the Confidant prior to its disclosure;
- (e) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
- (f) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (g) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides where the circumstances reasonably permit the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (h) the information is required by OIPC in connection with the construction of the GTAYC; or
- (i) the information would not be exempt from disclosure under FIPPA.

5.6 Survival of Confidentiality

Except for Confidential Information that the Contracting Parties have identified in writing to OIPC as being commercially sensitive, in which case the obligations of Section 5.1 to Section 5.5 inclusive shall continue, the obligations in Section 5.1 to Section 5.5, inclusive, will cease on the date that is three (3) years after the Total Completion of the Project.

**ARTICLE 6 - ASSIGNMENT, SUBCONTRACTING
AND CHANGES IN CONTROL**

6.1 Contracting Parties Assignment

- (a) Contracting Parties shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement, the Construction Contract or any other Implementing Agreement without the prior written consent of OIPC, which consent may be unreasonably withheld or delayed.
- (b) Section 6.1(a) shall not apply to:
 - (i) the grant of security to Lender under any of the Lending Agreements provided that any grantee of such security shall enter into the Lender's Direct Agreement; or
 - (ii) any subcontract or any sub-subcontract entered into by Contracting Parties or their subcontractors in connection with the Project.

6.2 OIPC Assignment

- (a) OIPC may sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of its interest, whether legal or beneficial in this Project Agreement or any Implementing Agreement:
 - (i) to the Province;
 - (ii) to any public entity to whom OIPC, exercising its statutory rights, would be entitled to transfer same; or
 - (iii) in circumstances other than those described in Sections 6.2(a)(i) and 6.2(a)(ii), with the prior written consent of Contractor, not to be unreasonably withheld or delayed,

provided that the Person to whom any such sale, assignment, transfer, disposition or other alienation is made has the capacity to perform, and agrees in writing with the Contracting Parties to perform, the obligations of OIPC hereunder to the extent sold, assigned, transferred, disposed of or alienated and under any of the Implementing Agreements to which any of the Contracting Parties and OIPC are parties.

- (b) Upon any sale, assignment, transfer, disposition or other alienation pursuant to Section 6.2(a), OIPC shall be released of all of its obligations hereunder to the extent sold, assigned, transferred, disposed of or alienated.

ARTICLE 7 - NOTICES

7.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a "**Notice**") required or permitted under this Project Agreement shall be served by sending the same by facsimile or by hand, as follows:

If to Contractor: [DELETED]

If to Project Co: [DELETED]

If to OIPC: [DELETED]

with a copy to the OIPC
Project Manager at: [DELETED]

with a copy to:
MCYS: [DELETED]

7.2 Facsimile

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 7.2.

7.3 Change of Address

Any Party to this Project Agreement may, from time to time, change any of its contact information set forth in Section 7.1 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

7.4 Deemed Receipt of Notices

Subject to Section 7.4(a), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 7.4(a) and 7.4(b), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (a) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (b) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

ARTICLE 8 - GENERAL

8.1 Amendments

This Project Agreement may not be modified, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Project Agreement.

8.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any such right, power or remedy, in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of the right, power, or remedy or with respect to any other such right, power, or remedy.
- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

8.3 Relationship Between the Parties

The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties or between OIPC, MCYS and Contracting Parties any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between OIPC, PIR or MCYS and any Affiliate, representative or employee of a Contracting Party.

8.4 Entire Agreement

Except where provided otherwise in this Project Agreement, this Project Agreement and the Implementing Agreements constitute the entire agreement between the Parties in connection with its subject matter and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Project Agreement.

8.5 No Reliance

Each of the Parties acknowledges that:

- (a) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any Person, whether a Party to this Project Agreement or not, except

those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and

- (b) this Section 8.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under Applicable Law.

8.6 Severability

If any provision of this Project Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement. If any such provision of this Project Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Project Agreement as near as possible to its original intent and effect.

8.7 Enurement

This Project Agreement and any of the Implementing Agreements to which both OIPC and either of Contracting Parties are parties shall enure to the benefit of, and be binding on, OIPC and Contracting Parties and each of their respective successors and permitted transferees and assigns.

8.8 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the Implementing Agreements shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

8.9 Cumulative Remedies

Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

8.10 Further Assurance

Each Party shall do all things, from time to time, and execute all further instruments, agreements and documents necessary to give full effect to this Project Agreement.

8.11 Costs

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement and the Implementing Agreements.

8.12 Proof of Authority

Contracting Parties shall provide proof to OIPC, in a form acceptable to OIPC, that any Person executing this Project Agreement or any of the Implementing Agreements on behalf of Contractor or Project Co has the requisite authority to execute this Project Agreement on behalf of and to bind Contractor or Project Co.

8.13 Time is of the Essence

Time is of the essence of this Project Agreement.

8.14 Counterparts

This Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original, faxed or other electronic form provided that any Party providing its signature in faxed or other electronic form shall promptly forward to such Party an original signed copy of this Project Agreement which was so transmitted.

8.15 Language of Agreement

Each Party acknowledges having requested and being satisfied that this Project Agreement and related documents be drawn in English. *Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglaise et s'en declare satisfaite.*

Signature Pages Follow

IN WITNESS WHEREOF the Parties have executed this Project Agreement as of the date first above written.

ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, as agent for Her Majesty The Queen in Right of Ontario as represented by the Minister of Public Infrastructure Renewal

Per: _____
Name: [DELETED]
Title: [DELETED]

Per: _____
Name: [DELETED]
Title: [DELETED]

Signature Page Follows

BIRD CONSTRUCTION COMPANY, by its
general partner, **BIRD MANAGEMENT LTD.**

Per: _____
Name: [DELETED]
Title: [DELETED]

Per: _____
Name: [DELETED]
Title: [DELETED]

We have authority to bind the corporation.

BIRD GTAYC INC.

Per: _____
Name: [DELETED]
Title: [DELETED]

Per: _____
Name: [DELETED]
Title: [DELETED]

We have authority to bind the corporation.

SCHEDULE 1
FORM OF CONSTRUCTION CONTRACT

SCHEDULE 2

FORM OF LIMITED ASSIGNMENT OF CONSTRUCTION CONTRACT

THIS LIMITED ASSIGNMENT OF CONSTRUCTION CONTRACT is made as of the 27th day of April, 2007

BETWEEN:

BIRD GTAYC INC., a corporation incorporated under the laws of the Province of Ontario

("Project Co")

AND:

ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, as agent for Her Majesty The Queen in Right of Ontario as represented by the Minister of Public Infrastructure Renewal
("OIPC")

AND:

BIRD CONSTRUCTION COMPANY, a limited partnership created under the laws of the Province of Ontario, by its general partner, BIRD MANAGEMENT LTD.

("Contractor")

WHEREAS:

- A. Project Co, OIPC, and Contractor have entered into a Project Agreement dated the 20th day of March, 2007 (the "**Project Agreement**") in respect to the finance and construction of the GTAYC in Brampton, Ontario.
- B. In furtherance of the provisions of Section 4.1 of the Project Agreement, Project Co and Contractor entered into the Guaranteed Price Contract dated the 27th day of April, 2007 (the "**Construction Contract**") with respect to the Project, an executed copy of which is attached as Schedule A.
- C. Project Co and Contractor have entered into the Financing with Lender for the purpose of financing, among other things, the Base Progress Payments under the Construction Contract during the period from the commencement of construction to and including the Substantial Performance Date.

- D. Contractor has agreed to be a party to this Limited Assignment of Construction Contract to acknowledge the terms of the assignment of the Construction Contract by Project Co to OIPC, the assumption of the Construction Contract by OIPC and the amendment to the Construction Contract.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions

All capitalized terms not otherwise defined in this Limited Assignment of Construction Contract shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:

- (a) "**Additional Owner Payments**" has the meaning given to it in the Construction Contract.
- (b) "**Agent**" means CIT Group Securities (Canada) Inc., acting for and on behalf of Lender.
- (c) "**Assumed Rights and Obligations**" has the meaning given to it in Section 3.2.
- (d) "**Base Progress Payments**" has the meaning given to it in the Construction Contract.
- (e) "**Certified Cost to Complete**" means the value of the Work remaining to be performed under the Construction Contract following the last day of the agreed monthly payment period ending immediately prior to the Reimbursement Payment Date as certified to OIPC by Consultant and agreed to by Project Co and Contractor.
- (f) "**Change in the Scope of the Work**" has the meaning given to it in the Construction Contract.
- (g) "**Change Order**" has the meaning given to it in the Construction Contract.
- (h) "**Compensation Payment**" means either the Default Termination Payment or the Non-Default Termination Sum as defined in Schedule B.
- (i) "**Construction Contract**" has the meaning given to it in Recital B.
- (j) "**Construction Event of Default**" has the meaning given to it in the Lender's Direct Agreement.

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- (k) **"Enforcement Rights"** means the rights as against Contractor to enforce or terminate the Construction Contract under PART 7 – DEFAULT NOTICE therein.
- (l) **"Legislative Holdback"** means the holdback to be maintained under Part IV of the *Construction Lien Act* (Ontario).
- (m) **"Limited Assignment of Construction Contract"** means this limited assignment of construction contract and the schedule hereto.
- (n) **"Notice"** has the meaning given to it in Section 4.1.
- (o) **"OIPC Holdback"** means any amount which OIPC may withhold from payment under GC 5.7 – COMPLETION and GC 5.9 – WITHHOLDING OF PAYMENT of the Construction Contract.
- (p) **"OIPC Reimbursement Payment"** means the amount determined by subtracting from the amount of the Guaranteed Price, as adjusted in accordance with the terms of the Construction Contract as of the Reimbursement Payment Date, the following amounts:
 - (i) all Additional Owner Payments made to the Reimbursement Payment Date;
 - (ii) the Certified Cost to Complete as at the Reimbursement Payment Date;
 - (iii) the OIPC Holdback as at the Reimbursement Payment Date; and
 - (iv) any Legislative Holdback then required to be maintained by OIPC.
- (q) **"Reimbursement Payment Date"** has the meaning given to it in the Construction Contract.
- (r) **"Retained Payment Obligation"** has the meaning given to it in Section 3.1.
- (s) **"Substantial Performance Date"** has the meaning given to it in the Construction Contract.
- (t) **"Substantial Performance Holdback"** means the holdback pursuant to GC 5.6 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK of the Construction Contract.
- (u) **"Substantial Performance Holdback Payment Date"** means the date for payment of the Substantial Performance Holdback pursuant to GC 5.6 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK of the Construction Contract.
- (v) **"Work"** has the meaning given to it in the Construction Contract.

1.2 Schedules

This Limited Assignment of Construction Contract comprises this executed agreement and the following Schedules, which are hereby incorporated by reference into and form part of this Limited Assignment of Construction Contract:

- Schedule A – Executed Copy of Construction Contract
- Schedule B – Compensation on Termination
- Schedule C – Dispute Resolution Procedure.

1.3 Interpretation

The provisions of Section 1.3(a) and (e) – (x), inclusive, of the Project Agreement are hereby incorporated in their entirety and all references in same to "Project Agreement" shall be read as "Limited Assignment of Construction Contract".

ARTICLE 2 – REPRESENTATIONS AND WARRANTIES

2.1 Project Co and Contractor Representations and Warranties

Each of Project Co and Contractor severally represents and warrants to OIPC on behalf of itself that as at the date of this Limited Assignment of Construction Contract:

- (a) the Construction Contract is in full force and effect, unamended and neither Contractor nor Project Co is in default of any of its respective obligations thereunder;
- (b) an executed, true and complete copy of the Construction Contract is attached hereto as Schedule A; and
- (c) Project Co has done no act and has not consented to any proceedings that could create any security interest lien or encumbrance on its interest in the Construction Contract other than any lien or encumbrance in favour of Agent, for itself and for the benefit of the Lender, pursuant to the Lending Agreements.

ARTICLE 2A – AMENDMENTS OF CONSTRUCTION CONTRACT

2A.1 [DELETED]

ARTICLE 3 - ASSIGNMENT**3.1 Assignment by Project Co**

Subject to any prior assignment as security pursuant to the Financing, Project Co hereby assigns all of its right, title and interest in the Construction Contract to OIPC save and except the obligation to pay the Base Progress Payments, (the "**Retained Payment Obligation**") which obligation Project Co specifically retains and Project Co agrees with OIPC and Contractor to pay the Base Progress Payments in accordance with and subject to the applicable provisions of the Construction Contract, including, without limitation, the provisions of Article A-7 – PAYMENT and PART 5 - PAYMENT of the Construction Contract therein, including any provision of the Construction Contract pursuant to which a Retained Payment Obligation may be subject to holdback.

3.2 Rights to Enforce

Project Co may assign its interest in the Construction Contract to Agent as security for the Financing. Such assignment may include all of Project Co's Enforcement Rights in order that Agent may enforce the provisions of the Construction Contract as against Contractor in the event of any default under the Construction Contract subject to and in accordance with the provisions of the Lender's Direct Agreement. Project Co and Contractor acknowledge and agree that OIPC shall be entitled to exercise all rights and, subject to and in accordance with the terms of the Lender's Direct Agreement, enforce all of the covenants and obligations of Contractor in accordance with the terms of the Construction Contract.

3.3 Assumption by OIPC

OIPC hereby accepts the assignment of the Construction Contract from Project Co and agrees to assume all of the rights, benefits and obligations save and except the Retained Payment Obligation and subject to the prior rights of **Lender** (the "**Assumed Rights and Obligations**") and covenants and agrees with Project Co and with Contractor to observe and perform all of the Assumed Rights and Obligations including, for greater clarity, the payment of all Additional Owner Payments the Certified Cost to Complete and OIPC Holdbacks as same become due and payable to Contractor in accordance with the terms of the Construction Contract.

3.4 OIPC Reimbursement Payment

Subject to Section 3.10, OIPC covenants and agrees with Project Co to pay to Project Co the OIPC Reimbursement Payment as determined by Consultant on the Reimbursement Payment Date.

3.5 Direction of OIPC Reimbursement Payment

Project Co hereby irrevocably directs OIPC to pay the OIPC Reimbursement Payment to the Agent and Project Co as directed by the Agent and shall not accept any re-direction without

the consent of the Person to whom the OIPC Reimbursement Payment is directed. OIPC will pay to or as directed by Project Co the amount that Project Co is entitled to under this Limited Assignment of Construction Contract once OIPC is satisfied that the conditions for payment have been satisfied.

3.6 Payment of Substantial Performance Holdback

Subject to Section 3.10, OIPC covenants and agrees with Project Co to pay to Project Co the Substantial Performance Holdback on the Substantial Performance Holdback Payment Date.

3.7 OIPC Holdback

The OIPC Holdback shall be reduced from time to time as a result of such actions by Contractor as confirmed by Consultant in accordance with the terms and conditions of the Construction Contract. To the extent the OIPC Holdback is reduced from time to time, OIPC shall pay the amount of the OIPC Holdback reductions to Contractor or as otherwise directed by Contractor and shall not accept any re-direction without the consent of the Person to whom payment is directed.

3.8 Additional Owner Payments

OIPC will pay all Additional Owner Payments to Contractor on a progress payment basis in the manner and at the times contemplated by the Construction Contract.

3.9 Certified Cost to Complete

After OIPC has paid the OIPC Reimbursement Payment, it shall thereafter continue to be responsible for payment of the Certified Cost to Complete as at the Reimbursement Payment Date on a progress payment basis in the manner and at the times contemplated by the Construction Contract.

3.10 Assumption Acknowledgement by Contractor

Contractor hereby consents to the assignment of the Construction Contract by Project Co to OIPC on the terms and conditions of this Limited Assignment of Construction Contract, including, without limitation, all of the provisions of this Article 3 and agrees to the assumption of the Construction Contract on such terms and conditions by OIPC and further agrees that except as set out in Section 3.1, OIPC is entitled to the benefit of and to enforce all of the covenants and obligations of the "Owner" under the terms of the Construction Contract as if OIPC were an original party to the Construction Contract with Contractor. Contractor further acknowledges and agrees with OIPC that OIPC is not responsible for the payment of any Base Progress Payment nor any Legislative Holdbacks in respect thereof except to the extent deducted from any OIPC Reimbursement Payment and further that the

failure of Project Co to make any Base Progress Payment or to release any Legislative Holdbacks in respect thereof except to the extent deducted from any OIPC Reimbursement Payment, when due shall not constitute a default under the Construction Contract and shall not give rise to any remedy or right of action on the part of Contractor under the Construction Contract.

3.11 Compensation on Termination

If the Construction Contract is terminated pursuant to GC 7.1.1, GC 7.1.4, GC 7.1.8 or GC 7.2 then:

- (a) OIPC shall pay the Compensation Payment to Project Co, calculated and payable in accordance with Schedule B; and
- (b) the provisions of Sections 3.3 through to 3.10 inclusive, shall no longer apply.

Project Co hereby irrevocably directs OIPC to pay the Compensation Payment to the Agent and Project Co as directed by the Agent and shall not accept any re-direction without the consent of the Person to whom the Compensation Payment is directed. OIPC will pay to or as directed by Project Co the amount that Project Co is entitled to under this Limited Assignment of Construction Contract once OIPC is satisfied that the conditions for payment contained herein have been satisfied.

ARTICLE 4 - NOTICES

4.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a "Notice") required or permitted under this Limited Assignment of Construction Contract and/or the Construction Contract shall be served by sending the same by facsimile or by hand, as follows:

If to Contractor: [DELETED]

If to Project Co: [DELETED]

If to OIPC: [DELETED]

with a copy to the OIPC Project Manager at: [DELETED]

with a copy to: [DELETED]
MCYS:

4.2 Facsimile

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 4.2.

4.3 Change of Address

Any Party to this Limited Assignment of Construction Contract may, from time to time, change any of its contact information set forth in Section 4.1 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

4.4 Deemed Receipt of Notices

Subject to Section 4.4(a), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 4.4(a) and 4.4(b), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (a) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (b) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

ARTICLE 5 - GENERAL**5.1 Amendments**

This Limited Assignment of Construction Contract may not be modified, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Limited Assignment of Construction Contract.

5.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Limited Assignment of Construction Contract shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any such right, power or remedy, in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of the right, power, or remedy or with respect to any other such right, power, or remedy.
- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

5.3 Relationship Between the Parties

The Parties are independent contractors. This Limited Assignment of Construction Contract is not intended to and does not create or establish between the Parties, or between OIPC, MCYS and Contracting Parties any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between OIPC, PIR or MCYS and any Affiliate, representative or employee of a Contracting Party.

5.4 Entire Agreement

Except where provided otherwise in this Limited Assignment of Construction Contract, this Limited Assignment of Construction Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Limited Assignment of Construction Contract.

5.5 No Reliance

Each of the Parties acknowledges that:

- (a) it has not entered into this Limited Assignment of Construction Contract on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any Person, whether a Party to this Limited Assignment of Construction Contract or not, except those expressly made, given or repeated in this Limited Assignment of Construction Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Limited Assignment of Construction Contract; and
- (b) this Section 5.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Limited Assignment of Construction

Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Limited Assignment of Construction Contract.

5.6 Severability

If any provision of this Limited Assignment of Construction Contract is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Limited Assignment of Construction Contract. If any such provision of this Limited Assignment of Construction Contract is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Limited Assignment of Construction Contract as near as possible to its original intent and effect.

5.7 Enurement

This Limited Assignment of Construction Contract shall enure to the benefit of, and be binding on, OIPC and Contracting Parties and each of their respective successors and permitted transferees and assigns.

5.8 Governing Law and Jurisdiction

- (a) This Limited Assignment of Construction Contract, shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

5.9 Cumulative Remedies

Except as otherwise set forth in this Limited Assignment of Construction Contract, the rights, powers and remedies of each Party set forth in this Limited Assignment of Construction Contract are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Limited Assignment of Construction Contract.

5.10 Further Assurance

Each Party shall do all things, from time to time, and execute all further instruments, agreements and documents necessary to give full effect to this Limited Assignment of Construction Contract.

5.11 Costs

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Limited Assignment of Construction Contract.

5.12 Proof of Authority

Contracting Parties shall provide proof to OIPC in a form acceptable to OIPC that any Person executing this Limited Assignment of Construction Contract on behalf of Contractor or Project Co provide proof, that they have the requisite authority to execute this Limited Assignment of Construction Contract on behalf of and to bind Contractor or Project Co.

5.13 Counterparts

This Limited Assignment of Construction Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original, faxed or other electronic form provided that any Party providing its signature in faxed or other electronic form shall promptly forward to such Party an original signed copy of this Limited Assignment of Construction Contract, which was so transmitted.

5.14 Language of Agreement

Each Party acknowledges having requested and being satisfied that this Limited Assignment of Construction Contract and related documents be drawn in English. *Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglaise et s'en declare satisfaite.*

Signature Page Follows

IN WITNESS WHEREOF the Parties have executed this Limited Assignment of Construction Contract as of the date first above written.

BIRD GTAYC INC.

Per: _____
Name: [DELETED]
Title: [DELETED]

I have authority to bind the corporation.

ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, as agent for Her Majesty The Queen in Right of Ontario as represented by the Minister of Public Infrastructure Renewal

Per: _____
Name: [DELETED]
Title: [DELETED]

Per: _____
Name: [DELETED]
Title: [DELETED]

BIRD CONSTRUCTION COMPANY, by its general partner, BIRD MANAGEMENT LTD.

Per: _____
Name: [DELETED]
Title: [DELETED]

I have authority to bind the corporation.

SCHEDULE A

EXECUTED COPY OF CONSTRUCTION CONTRACT

SCHEDULE B

COMPENSATION ON TERMINATION

ARTICLE 1 - DEFINITIONS

1.1 Definitions

All capitalized terms not otherwise defined in this Schedule shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:

- (a) **"Debt Amount"** means all accrued and unpaid interest and any "make whole" payments or breakage fees (less any breakage benefits) which Project Co is obligated to pay to Lender pursuant to the Lending Agreements, together with the outstanding principal amount of debt funded under the Lending Agreements.
- (b) **"Default Termination Payment"** has the meaning given in Section 2.1(b) of this Schedule B.
- (c) **"Demobilization Costs"** means all reasonable costs of Contractor associated with the demobilization of the Work as a result of the termination of the Construction Contract;
- (d) **"Direct Losses"** means all damages, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses;
- (e) **"Equity IRR"** means the projected internal rate of return to all shareholders of Project Co taking into account their shareholdings, which internal rate of return is consistent with **[DELETED]**;
- (f) **"Non-Default Termination Sum"** has the meaning given in Section 3.1(b) of this Schedule B.
- (g) **"Indirect Losses"** means any losses claimed that are (a) for punitive, exemplary or aggravated damages, (b) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity, or (c) for a claim for consequential loss or for indirect loss of any nature;
- (h) **"Invoice Date"** means the date that is the later of:
 - (i) the date on which OIPC receives an invoice from Project Co for the Non-Default Termination Sum; and

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- (ii) the date on which OIPC receives the supporting evidence required pursuant to Section 4.1(a) of this Schedule B.
- (i) "**Termination Date**" means the date the Construction Contract is terminated pursuant to GC 7.1.1, GC 7.1.4, GC 7.1.8, GC 7.2.1, GC 7.2.2 or GC 7.2.3.
- (j) "**Work**" has the meaning given in the Construction Contract.

ARTICLE 2 - COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT

2.1 Compensation

- (a) If OIPC terminates the Construction Contract pursuant to GC 7.1.1 or GC 7.1.4 of the Construction Contract, OIPC shall pay to Project Co the Default Termination Payment.
- (b) The "**Default Termination Payment**" shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of the Construction Contract as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) all Additional Owner Payments made to the Termination Date;
 - (ii) OIPC's estimate of the cost to complete the Work including the cost to remedy any defective or deficient Work determined on a reasonable basis in consultation with OIPC's architect and other consultants;
 - (iii) OIPC's estimate of the aggregate of all Direct Losses suffered, sustained or incurred by OIPC as a result of, in respect of, or arising out of the event or events which resulted in the termination of the Construction Contract and out of the termination together with all costs of entering into a new construction contract; and
 - (iv) any amount that OIPC determines is necessary to hold back under Part IV of the *Construction Lien Act* (Ontario) in order that OIPC may vacate any lien that may arise under the *Construction Lien Act* (Ontario) against the OIPC's lands in relation to the Work.
- (c) To the extent that any amounts that OIPC has determined pursuant to Section 2.1(b)(ii), (iii) or (iv) above are in excess of what is required by OIPC to complete the Work, compensate for Direct Losses or vacate liens arising in connection with the Work, as applicable, OIPC shall promptly return such excess amounts to Project Co.
- (d) OIPC shall pay the Default Termination Payment in accordance with Article 4 of this Schedule B.

ARTICLE 3 - COMPENSATION ON NON-DEFAULT TERMINATION**3.1 Compensation**

- (a) If Contractor terminates the Construction Contract pursuant to GC 7.2.1, 7.2.2 or 7.2.3 or if OIPC terminates the Construction Contract pursuant to GC 7.1.8, OIPC shall pay to Project Co the Non-Default Termination Sum.
- (b) The "**Non-Default Termination Sum**" shall be an amount equal to the aggregate, without duplication, of:
 - (i) all Base Progress Payments and Additional Owner Payments properly due and payable under the Construction Contract to and including the Termination Date and any Cost of the Financing directly related to such Base Progress Payments to the extent not funded under the Lending Agreements as part of the Debt Amount;
 - (ii) all Demobilization Costs;
 - (iii) the Debt Amount to the date of payment to Project Co;
 - (iv) an amount which, if paid on the Termination Date (but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date), gives an internal rate of return to the Termination Date equal to the Equity IRR on the amount of cash paid to Project Co for subscribed share capital (to the extent that such share capital proceeds have been applied by Project Co for the purposes of the Project); and
 - (v) if OIPC terminates the Construction Contract under GC 7.1.8, "for the convenience of the Owner", or the Contractor terminates the Construction Contract under GC 7.2.1 or GC 7.2.2 as a result of an event under GC 6.5.2(a), or under GC 7.2.3, all other Direct Losses suffered, sustained or incurred by Project Co as a result of, or arising out of, the event or events which have resulted in the termination of the Construction Contract and out of the termination.
- (c) OIPC shall pay the Non-Default Termination Sum in accordance with Article 4 of this Schedule B.

ARTICLE 4 – GENERAL**4.1 Payment**

- (a) In the event of a termination referred to in Section 3.1(a) of this Schedule B, as soon as practicable after, and, in any event, within sixty (60) days after, the Termination Date, Project Co shall give to OIPC an invoice for the Non-Default Termination Sum (reasonably estimated if not then known) and sufficient supporting evidence,

reasonably satisfactory to OIPC, justifying the amount of the Non-Default Termination Sum including a detailed breakdown of each of the individual items comprising such sum. To the extent the Non-Default Termination Sum is based on estimates of cost, the Parties will readjust as soon as such estimated costs can be determined.

- (b) OIPC shall pay to Project Co the Non-Default Termination Sum within sixty (60) days after the Invoice Date and so long as all demobilization of the Work has been completed.
- (c) In the event of a termination under Section 2.1(a) of this Schedule B, OIPC shall determine the Default Termination Payment as soon as practical under Section 2.1(b) of this Schedule B and shall deliver to Project Co and to Contractor sufficient supporting evidence of the Default Termination Payment.
- (d) OIPC shall pay to Project Co the Default Termination Payment within sixty (60) days after delivering the evidence described in Section 4.1(c) of this Schedule B.

4.2 Costs

The costs and expenses to be taken into account in the calculation of the Non-Default Termination Sum due pursuant to this Schedule B shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

4.3 Undisputed Amounts

Either OIPC or Project Co may dispute the calculation of any termination amount and in the event of a dispute then any undisputed amount shall be paid in accordance with this Schedule B and the disputed amount shall be dealt with in accordance with Schedule C - Dispute Resolution Procedure to the Limited Assignment of Construction Contract. Notwithstanding the foregoing, in the event any disputed amount exceeds [DELETED] then either party may proceed to court for the resolution of such dispute.

4.4 Outstanding Debt Amount

- (a) Subject to Section 4.3 of this Schedule B, OIPC shall be entitled to rely on a certificate of Agent as to the Debt Amount outstanding at any relevant time.
- (b) If a receipt or other acknowledgement is given by Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Debt Amount, such receipt or other acknowledgement shall discharge OIPC's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed

4.5 Set-off

OIPC shall be entitled to set-off against the Non-Default Termination Sum or the Default Termination Payment, such amounts that OIPC is entitled to set-off or withhold pursuant to the Project Agreement or the Construction Contract provided that the Non-default Termination Sum shall never be less than **[DELETED]**.

4.6 Full and Final Settlement

- (a) Except as otherwise provided in Section 4.6(b) of this Schedule B, any compensation paid pursuant to Section 2.1 or Section 3.1 of this Schedule B in the total amount owing thereunder shall be in full and final settlement of any claims, demands and proceedings of Project Co and OIPC as between themselves and of Contractor and OIPC as between themselves and each shall be released from all liability to the other in relation to any breaches or other events leading to the termination of the Construction Contract and the circumstances leading to such breach or termination and Project Co and OIPC as between themselves and Contractor and OIPC as between themselves shall be excluded from all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common-law or otherwise.
- (b) Section 4.6(a) of this Schedule B shall be without prejudice to any liability of either Party to the other including under the indemnities contained in the Construction Contract that arose prior to the Termination Date (but not from termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 4.5 of this Schedule B.

SCHEDULE C

DISPUTE RESOLUTION PROCEDURE

ARTICLE 1 - GENERAL

- 1.1** All disputes, controversies, or claims arising out of or relating to the calculation of any termination amount under Section 4.3 of Schedule B to the Limited Assignment of Construction Contract (collectively and individually, a "Dispute") shall be resolved in accordance with the provisions of this Schedule C.

ARTICLE 2 - REFERRAL OF DISPUTES TO ARBITRATION

- 2.1** Either Party may, by written notice, require that the Dispute be resolved by arbitration pursuant to Section 3. Such notice will not be effective unless it indicates it is a notice to arbitrate and is delivered to the other Party and provided further that such notice expressly identifies the specific Dispute that is to be the subject of the arbitration.

ARTICLE 3 - RESOLUTION BY ARBITRATION

- 3.1** If a Dispute is referred to arbitration by Section 2.1 of this Schedule C, the Dispute shall be resolved by arbitration in accordance with the *Arbitration Act, 1991* (Ontario).
- 3.2** Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within five (5) Business Days after a notice to arbitrate pursuant to Section 2.1 of this Schedule C has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three (3) person arbitration tribunal, in which case that particular Dispute shall be resolved by a three (3) person arbitration tribunal.
- 3.3** If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:
- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within ten (10) days after delivery of the notice to arbitrate pursuant to Section 6 of this Schedule C; and
 - (b) if the Parties fail to agree or jointly appoint the arbitrator within such ten (10) day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity from the lists of potential arbitrators submitted to the court by the Parties, or if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole and absolute discretion to appoint anyone who meets the requirements set out in this Schedule C for the qualifications and experience of the arbitrator.

3.4 If the arbitration tribunal is comprised of three (3) arbitrators:

- (a) the arbitrators shall be appointed as follows:
 - (i) each Party shall appoint one arbitrator no later than five (5) Business Days after delivery of the notice to arbitrate pursuant to Section 2.1 of this Schedule C;
 - (ii) if a Party fails to appoint an arbitrator within five (5) Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 3.3(b) of this Schedule C;
 - (iii) the arbitrators appointed in accordance with the foregoing shall, within five (5) Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
 - (iv) if the two (2) arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two (2) arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 3.3(b) of this Schedule C; and
- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.

3.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.

3.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way financially interested in the Project or in the business affairs of OIPC, Project Co, Contractor, Lender, Agent or any consultant, subconsultant or subcontractor of any of them.

3.7 The arbitrator(s) shall have the jurisdiction and power to:

- (a) amend or vary any and all rules under the Arbitration Act, 1991 (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
- (b) require some or all of the evidence to be provided by affidavit;
- (c) hold a hearing at which evidence and submissions are presented by the Parties;

- (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award; and
 - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary.
- 3.8** The place of arbitration shall, at the option of OIPC, be the municipality in which OIPC is located or Toronto, Ontario. The language of the arbitration shall be English.
- 3.9** The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following
- (a) the Party entitled to costs;
 - (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.
- 3.10** In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 3.11** The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 3.12** The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than forty-five (45) days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three (3) arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 3.13** This Schedule C, constitutes an agreement to arbitrate that shall be specifically enforceable.

SCHEDULE 3

FORM OF LENDER'S DIRECT AGREEMENT

THIS LENDER'S DIRECT AGREEMENT is made as of the 27th day of April, 2007

BETWEEN:

**ONTARIO INFRASTRUCTURE PROJECTS
CORPORATION, as agent for Her Majesty The Queen
in Right of Ontario as represented by the Minister of Public
Infrastructure Renewal**

("OIPC")

AND:

**CIT GROUP SECURITIES (CANADA) INC., acting as agent
for and on behalf of Lender**

("Agent")

AND:

**BIRD GTAYC INC., a corporation incorporated under the
laws of the Province of Ontario**

("Project Co")

AND:

**BIRD CONSTRUCTION COMPANY, a limited partnership
created under the laws of the Province of Ontario, represented
by its general partner, BIRD MANAGEMENT LTD.**

("Contractor")

WHEREAS:

- A. OIPC, Project Co and Contractor have entered into the Project Agreement.
- B. Project Co has entered into the Construction Contract in the capacity of "Owner" with Contractor with respect to the Project.

- C. Project Co has under the Limited Assignment of Construction Contract assigned its rights and obligations as "Owner" under the Construction Contract to OIPC, save and except in respect to the obligation to pay any of the Base Progress Payments (the "**Retained Payment Obligation**").
- D. Under the Limited Assignment of Construction Contract, OIPC has acknowledged the right of Agent as against Contractor to enforce or to terminate the Construction Contract under PART 7 – DEFAULT NOTICE (the "**Enforcement Rights**").
- E. Under the Lending Agreements, the Financing is to be provided to Project Co by Lender to finance the payment of the Base Progress Payments to Contractor under the Construction Contract, conditional, among other things, on Contractor and Project Co executing and delivering the Lending Agreements.
- F. Agent has agreed to enter into this Lender's Direct Agreement with OIPC, Project Co and Contractor in relation to the Lending Agreements, the exercise of its rights under the Lending Agreements and the remedying of breaches by Project Co under the Project Agreement and by Contractor under the Construction Contract.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

- 1.1** In this Lender's Direct Agreement, all capitalized terms not otherwise defined in this Lender's Direct Agreement shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:
- (a) "**Appointed Representative**" means any of the following to the extent so identified in an Appointed Representative Notice:
 - (i) Agent, Lender or any Affiliate of either of them;
 - (ii) a receiver or manager or any permutation thereof of Contractor and/or Project Co appointed under the Lending Agreements;
 - (iii) a Person directly or indirectly owned or controlled by Agent or Lender; or
 - (iv) any other Person approved by OIPC (such approval not to be unreasonably withheld or delayed).
 - (b) "**Appointed Representative Notice**" has the meaning given to it in Section 7.2.
 - (c) "**Article**" and "**Section**" mean and refer to the specified article and section or subsection of this Lender's Direct Agreement.

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- (d) "**Base Progress Payments**" has the meaning given to it in the Construction Contract.
- (e) "**Change Directive**" has the meaning given to it in the Construction Contract.
- (f) "**Change Order**" has the meaning given to it in the Construction Contract.
- (g) "**Compensation Payment**" has the meaning given to it in the Limited Assignment of Construction Contract.
- (h) "**Construction Contract**" means the Guaranteed Price Contract entered into between Project Co in the capacity of "Owner" and Contractor with respect to the Project as assigned to OIPC in accordance with the Limited Assignment of Construction Contract.
- (i) "**Construction Contract Assignment**" means an assignment of the Construction Contract by an Appointed Representative to a Replacement Contractor as contemplated in Section 7.3.
- (j) "**Construction Default Notice**" has the meaning given to it in Section 6.1.
- (k) "**Construction Event of Default**" means the occurrence of an event under the Construction Contract that, upon the expiry of any cure periods, provided for therein, would entitle OIPC to terminate the Construction Contract.
- (l) "**Construction Security**" means the insurance contemplated under GC 11.1 – INSURANCE of the Construction Contract and the performance bonds and labour and material payment bonds as contemplated in GC 11.2 - BONDS of the Construction Contract.
- (m) "**Enforcement Action**" means any exercise by Agent of its rights and remedies under the Lending Agreements.
- (n) "**Enforcement Event**" means an event of default under the Lending Agreements or any event which permits an Enforcement Action.
- (o) "**Legislative Holdback**" means the holdback to be maintained under the Construction Contract pursuant to Part IV of the *Construction Lien Act* (Ontario).
- (p) "**Lender's Consultant**" has the meaning given to it in the Construction Contract.
- (q) "**Lender's Direct Agreement**" means this lender's direct agreement.
- (r) "**Lender**" means the lenders from time to time under the Lending Agreements.
- (s) "**Lending Agreements**" means any or all of the agreements or instruments to be entered into by Contractor or Project Co or any of their Affiliates relating to the financing of the Project by the Lender and includes but is not limited to:

[DELETED]

- (t) "**Lien**" means the lien provided for under Section 14(1) of the *Construction Lien Act* (Ontario).
- (u) "**Limited Assignment of Construction Contract**" means the Limited Assignment of Construction Contract between Project Co, OIPC and Contractor made as of even date herewith.
- (v) "**Notice Period**" means the period starting on the date of delivery of a Construction Default Notice and ending one hundred and twenty (120) days later.
- (w) "**OIPC Reimbursement Payment**" has the meaning given to it in the Limited Assignment of Construction Contract.
- (x) "**Party**" means any of OIPC, Project Co, Contractor or Agent, and "**Parties**" means all of OIPC, Project Co, Contractor and Agent.
- (y) "**Reimbursement Payment Date**" has the meaning given to it in the Construction Contract.
- (z) "**Replacement Construction Contract**" has the meaning given to it in Section 7.3.
- (aa) "**Replacement Contractor**" means a replacement contractor under a Construction Contract Assignment or a Replacement Construction Contract entered into pursuant to Section 7.3 who must either be a contractor that is a Pre-Qualified Proponent under the Request for Qualifications (RFQ No. OIPC-06-00-M003) or that is acceptable to PIR, OIPC and MCYS, acting reasonably.
- (bb) "**Step-In Date**" means the date on which OIPC receives a Step-In Notice from Agent.
- (cc) "**Step-In Notice**" means the notice given by Agent to OIPC pursuant to Section 7.1 stating that Agent is exercising its step-in rights under Article 7 of this Lender's Direct Agreement.
- (dd) "**Step-In Period**" means the period from the Step-In Date up to and including the Step-Out Date.
- (ee) "**Step-Out Date**" means the earlier to occur of (i) the expiry of the periods provided for in Sections 6.3(a) or 6.3(b), as the case may be and (ii) the date on which OIPC receives a Step-Out Notice.
- (ff) "**Step-Out Notice**" has the meaning given to it in Section 8.1.
- (gg) "**Substantial Performance Date**" has the meaning given to it in the Construction Contract.

(hh) "**Substantial Performance of the Work**" has the meaning given to it in the Construction Contract.

1.2 Interpretation

The provisions of Section 1.3(a) and (e) – (x), inclusive, of the Project Agreement are hereby incorporated in their entirety and all references in same to "Project Agreement" shall be read as "Lender's Direct Agreement".

ARTICLE 2 - CONFLICT IN DOCUMENTS

2.1 In the event of ambiguities, conflicts or inconsistencies between or among this Lender's Direct Agreement, the Project Agreement, the Construction Contract and the Limited Assignment of Construction Contract, this Lender's Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of OIPC set out in this Lender's Direct Agreement or any part thereof which is not set out or provided for in the Construction Contract, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency. No review by OIPC of the Lending Agreements shall constitute an acceptance in or acquiescence to any of the Lending Agreements or any term or condition thereof by OIPC and this Lender's Direct Agreement, the Project Agreement and the Construction Contract shall not be subject to any of the terms and conditions of the Lending Agreements.

ARTICLE 3 - TERM

- 3.1 This Lender's Direct Agreement shall terminate automatically on the date on which all obligations that may be or become owing by Project Co to Agent or Lender under the Lending Agreements have been satisfied in full.
- 3.2 Promptly, and in no event more than thirty (30) days following its occurrence, Agent shall provide notice to OIPC of the date referred to in Section 3.1.
- 3.3 OIPC hereby provides to Lender, Agent and Project Co and agrees to provide to Replacement Contractor a non-exclusive license to have access to and to use the Place of the Work on the same terms and conditions as set out in GC 3.17.1 of the Construction Contract.

ARTICLE 4 - AGREEMENTS AND SECURITY

- 4.1 (a) Contractor, Project Co and Agent shall not amend or modify any Lending Agreements other than as expressly provided for under the terms of those agreements and so long as such amendment (a) is consistent in all material respects with **[DELETED]**, and (b) does not increase the costs of prepayment that were contained in the financing term sheet in the RFP Submission, and shall provide prompt notice to OIPC of any amendments or modifications accompanied by a copy thereof.
- (b) Contractor, Project Co and OIPC shall not amend or modify any Implementing Agreements without the prior written consent of Agent, not to be unreasonably

withheld or delayed, which consent shall not be withheld if the relevant amendment or modification does not (i) adversely affect the ability of Agent or Lender to exercise its rights under the Lending Agreements, (ii) adversely affect the security of the Lending Agreements, or (iii) increase the liability of Agent, Lender, Contractor or Project Co under the relevant agreement. Agent shall respond to any request for consent under this Section 4.1 within fifteen (15) days of receipt thereof, failing which Agent shall be deemed to have consented to the relevant amendment or modification.

- (c) Contractor, Project Co and OIPC acknowledge and agree that they will not, without the consent of Lender, proceed to execute or implement any Change Order and OIPC acknowledges and agrees that it will not issue any Change Directive, which, in either case, is in respect to a discretionary expansion of the construction scope of the Work initiated by OIPC and would (i) materially alter the scope of the Work, or (ii) materially impact the financing of the Project or otherwise materially and adversely alter the risk profile of the Project; provided the Parties further acknowledge and agree that where a Change Order or Change Directive, (i) costs less than [DELETED], or (ii) when aggregated with all other such Change Orders and Change Directives previously implemented, costs less than [DELETED], such Change Order or Change Directive shall be deemed not to materially alter the scope of the Work or impact the financing of the Project or otherwise materially and adversely alter the risk profile of the Project. When Lender's approval in respect of a Change Order or Change Directive in accordance with this Section 4.1 is required, Lender will respond to a written request within ten (10) Business Days (the "**Response Period**") of receiving such request for its approval. If Lender intends not to approve the Change Order or the Change Directive, Lender will notify OIPC within the Response Period and will set out its concerns in such notification. If Lender's concerns can be addressed on a basis acceptable to OIPC and Lender, then OIPC may proceed with such Change Order or Change Directive and will concurrently implement or cause to be implemented such agreed-upon solution, including as appropriate by way of an amendment to the Change Order or Change Directive or by a related Change Order or Change Directive.

- 4.2 Project Co and Contractor acknowledge and consent to the arrangements set out in this Lender's Direct Agreement, and agree not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lender's Direct Agreement.
- 4.3 Agent acknowledges having received a copy of each of the Implementing Agreements.
- 4.4 OIPC acknowledges having received a copy of each of the Lending Agreements and consents to the granting of security by Project Co and Contractor over the Implementing Agreements contained in the Lending Agreements.
- 4.5 Contractor, Project Co and Agent acknowledge that none of Contractor, Project Co, Agent or Lender shall, under the Project Agreement or any of the Implementing Agreements acquire any interest in the Project Lands or the Project notwithstanding any provision therein to the

contrary and that OIPC shall at all times retain the fee simple interest in and freehold title to the Project Lands and the Project to be constructed on the Project Lands under the Construction Contract. Contracting Parties shall have access to the Project Lands and the Project under and subject to the limited license created in the Construction Contractor.

- 4.6 Without limitation of any of their respective rights and remedies under this Lender's Direct Agreement, Contractor, Project Co and Agent acknowledge that OIPC is a public entity and nothing in this Lender's Direct Agreement or any of the Implementing Agreements including the Construction Contract shall preclude OIPC from acting on any directions to OIPC made by a Governmental Authority under Applicable Law or from being in compliance with all Applicable Law.

ARTICLE 5 - ENFORCEMENT OF SECURITY BY AGENT; LEGISLATIVE HOLDBACK

- 5.1 Agent shall concurrently with notice to Project Co, notify OIPC of any Enforcement Event, any notice of default delivered pursuant to the Lending Agreements, any Enforcement Action, any notice from Agent to Project Co to accelerate the maturity of any amounts owing by Project Co to Agent or Lender under the Lending Agreements or any notice from Agent to Project Co to demand repayment thereof.
- 5.2 Agent shall appoint Lender's Consultant who shall be responsible, *inter alia*, to advise Agent and Lender with respect to the amount of any Legislative Holdback in respect to all Base Progress Payments.
- 5.3 OIPC may conduct a subsearch of the Project Lands at any time and from time to time and notify Agent, Project Co and Contractor if any Lien that relates to the Project has been registered and if a Lien has been registered Contractor shall immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated. Agent acknowledges and agrees with OIPC that neither Agent nor Lender shall be entitled to rely on OIPC to conduct a subsearch or on any subsearch result of OIPC and that the result of any such subsearch provided by OIPC is, subject to the obligations of Contractor, Project Co and Agent hereunder, for information only.
- 5.4 Agent agrees to conduct a subsearch of the Project Lands prior to the advance of any Financing and if a Lien has been registered that relates to completion of the Work by Contractor in relation to the Project Agent shall direct Project Co to proceed to immediately take such steps as are required to have the Lien promptly discharged from the Project Lands and any other lands of OIPC against which the Lien may be registered and doing so shall be a condition precedent to the making of any advance of the Financing.

ARTICLE 6 - CONSTRUCTION EVENT OF DEFAULT

- 6.1 Subject only to the rights expressly afforded to Agent in this Article 6, OIPC shall serve notice to Agent of a Construction Event of Default (the "**Construction Default Notice**")

contemporaneously with any notice delivered by OIPC to Contractor under the Construction Contract.

6.2 At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 6.3), OIPC shall not exercise any right it may have to terminate the Construction Contract or exercise any other rights or remedies for a Construction Event of Default unless:

- (a) OIPC delivers to Agent a Construction Default Notice setting out the nature of the alleged default in reasonable detail; and
- (b) the Notice Period has expired and Agent has not delivered a Step-In Notice.

6.3 During the Step-In Period, OIPC shall not exercise any right it may have to terminate the Construction Contract or, except to the extent required to protect legal rights or comply with Applicable Law, exercise any other rights or remedies for a Construction Event of Default:

- (a) if, in the case of a Construction Event of Default which is capable of being cured, the Construction Event of Default has been cured by or on behalf of Appointed Representative or Appointed Representative is diligently proceeding to cure the breach in accordance with GC 7.1 of the Construction Contract within the time periods set forth in the Construction Contract including for greater certainty prior to the Longstop Date; or
- (b) if, in the case of a Construction Event of Default which is either (i) not capable of being cured (which, by way of example, would include an event described in GC 7.1.1 of the Construction Contract) or (ii) can only be cured in the determination of Agent (acting reasonably) by assigning the Construction Contract to a Replacement Contractor or entering into a Replacement Construction Contract as provided under Section 7.3, a Construction Contract Assignment with a Replacement Contractor has been entered into in accordance with Section 7.3 within one hundred and twenty (120) days of the delivery of the Construction Default Notice. In the case of either a Construction Contract Assignment or a Replacement Construction Contract having been entered into the Work thereunder is to be completed by the Longstop Date plus the period of time commencing on the Step-In-Date until the date that the Construction Contract Assignment or the Replacement Construction Contract has been entered into.

6.4 The Lender shall not take any action that would compromise the enforceability of the Construction Security.

ARTICLE 7 - LENDER'S STEP-IN RIGHTS

7.1 Subject to Section 7.2 and without prejudice to Agent's rights to enforce the Lending Agreements against Project Co and Contractor, Agent may give **OIPC** a Step-In Notice at any time:

- (a) during which a Construction Event of Default is subsisting (whether or not a Construction Default Notice has been served);
- (b) during the Notice Period; or
- (c) during which an Enforcement Event is subsisting

(which periods are jointly referred to herein as "**Lender Decision Period**").

7.2 At the time Agent delivers a Step-In Notice, Agent shall deliver written notice (an "**Appointed Representative Notice**") to OIPC of the identity of its proposed Appointed Representative.

7.3 Upon issuance of a Step-In Notice, Appointed Representative shall perform or cause to be performed all of Project Co's rights and obligations to enforce the covenants and obligations of Contractor under the Construction Contract pursuant to the Assigned Enforcement Rights and cause Contractor to remedy the Construction Event of Default and shall have the right if it is permitted to do so under the Lending Agreements, subject to the prior approval of OIPC (acting reasonably), and subject to the terms and conditions of the Construction Security, to:

- (a) access the Construction Security and, assign, pursuant to the Lending Agreements Contractor's interest in the Construction Contract and the other Implementing Agreements to a Replacement Contractor (the "**Construction Contract Assignment**") subject to the agreement by the Replacement Contractor to assume the terms and conditions of the Construction Contract; or
- (b) subject to the prior approval of OIPC (acting reasonably), terminate the Construction Contract pursuant to the Assigned Enforcement Rights and enter into a replacement construction contract with a Replacement Contractor (the "**Replacement Construction Contract**") on terms substantially similar to the Construction Contract provided, in either case, the Replacement Contractor covenants in the Construction Contract Assignment or the Replacement Construction Contract, as applicable, to remedy any curable breach of Contractor under the Construction Contract, whether in respect to payment or performance and whether arising prior to or during the Step-In Period and to vacate any Liens from the Project Lands in all cases whether arising prior to or during the Step-In Period. Further, the Replacement Contractor must provide replacement or otherwise ensure continued maintenance of the Construction Security under the Construction Contract in the event of a Construction Contract Assignment or under the Replacement Construction Contract in the event a Replacement Construction Contract is entered into.

7.4 At the time of a Construction Contract Assignment or the entering into of a Replacement Construction Contract under Section 7.3, unless Agent transfers the shares of Project Co to the Replacement Contractor pursuant to its rights under the Lending Agreements, the Replacement Contractor shall be required to form a substitute Project Co (the "**Substitute Project Co**"). If a Substitute Project Co is formed, then Agent shall assign the interests of Project Co under the Lending Agreements and the Implementing Agreements to Substitute Project Co or make such other arrangements under which Substitute Project Co stands in the place of Project Co under the Lending Agreements and the Implementing Agreements.

- 7.5** During the Step-In Period, OIPC shall deal with Appointed Representative instead of Project Co in connection with all matters related to the Construction Contract. Project Co agrees to be bound by all such dealings between OIPC and Appointed Representative to the same extent as if they had been between OIPC and Project Co.
- 7.6** OIPC may provide a notice in writing (the "**OIPC Default Notice**") to the Surety under this Lender's Direct Agreement stating that OIPC is thereby entitled to exercise all rights and to take all benefits of the Obligee, to the exclusion of Project Co. and the Agent under the following circumstances:
- (a) in the event that the Agent does not give OIPC a Step-In Notice during the Lender Decision Period;
 - (b) subject to Section 6.2, following termination by OIPC of the Construction Contract for default during the Step-In Period; or
 - (c) following a Step-Out Notice as provided in Article 8.
- 7.7** For greater certainty, Agent acknowledges and agrees that its rights as Obligee under the performance bond (being a component of the Construction Security) shall be limited to the enforcement (for the purpose of completing or arranging for the completion of the unperformed obligations of the Contractor under the Guaranteed Price Contract) of the obligations of the Surety as more particularly described in the performance bond and are subject to the Agent's obligation as an Obligee to pay the Balance of the Construction Contract Price, any portion of the Balance of the Construction Contract Price comprised of unpaid Additional Owner Payments under the Construction Contract remaining the responsibility of OIPC and not being payable by the Agent or the Lender ("Obligee", "Surety", "Principal" and "Balance of the Construction Contract Price" having the meanings given to them under the performance bond). If, notwithstanding the terms of this Agreement, the Agent receives any benefit from the Surety under the performance bond in the form of cash that is not applied by the Agent to the Work or partial repayment of principal, interest or fees, and fails to complete or cause to have completed the obligations of the Contractor under the Guaranteed Price Contract the Agent shall pay to the Owner an amount equal to the lesser of (a) the amount of the benefit obtained by the Agent from the Surety; and (b) the Owner's costs of obtaining the completion of the unperformed obligations of the Contractor under the Guaranteed Price Contract. No amounts paid or liabilities incurred by the Surety for the purpose of performing the obligations of the Contractor under the Guaranteed Price Contract shall constitute the receipt of benefit by the Agent from the Surety for the purposes of this Section 7.7.

ARTICLE 8 – STEP-OUT RIGHTS

- 8.1** Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to OIPC to terminate the Step-In Period on the Step-Out Date.

- 8.2** On expiry of the Step-In Period, where the Construction Contract has been assigned to the Replacement Contractor or a Replacement Construction Contract has been entered into as contemplated in Section 7.3, OIPC and Appointed Representative shall be released of any obligations to the other arising during the Step-In Period.
- 8.3** On expiry of the Step-In Period, if the Construction Contract has not been assigned to a Replacement Contractor or a Replacement Construction Contract has not been entered into or the Construction Event of Default has not been remedied by Appointed Representative, then:
- (a) any rights and obligations between Appointed Representative on the one hand and OIPC on the other hand, arising during the Step-In Period, shall be mutually released;
 - (b) for greater certainty, OIPC shall have no further obligation to Appointed Representative or Project Co to pay the OIPC Reimbursement Payment to Agent, Lender, Appointed Representative, Project Co or Contractor on the achievement of Substantial Performance of the Work under the Construction Contract other than the payment of the Default Termination Payment under Schedule B – Compensation on Termination to the Limited Assignment of Construction Contract; and
 - (c) subject to the Owner making the payment required under Section 8.3(b), Agent shall permit OIPC to thereupon have the full benefit and entitlement to the Construction Contract and the Construction Security without regard to any interest therein of Agent, Lender or Project Co and Agent agrees that OIPC may thereafter proceed to enforce all of its rights under the Construction Contract against Contractor without regard to any rights in favour of Agent, Lender or Project Co including the Enforcement Rights.
- 8.4** In the event that OIPC has, following the expiry of the Step-In Period, exercised the enforcement of its rights under the Construction Contract and the Construction Security in respect of a Construction Event of Default which is capable of being cured, and has caused the Construction Event of Default to be cured or has caused the Contractor to diligently proceed to cure the breach in accordance with GC 7.1 of the Construction Contract, then the provisions of Section 8.3(b) shall not apply and provided the Construction Event of Default is remedied, OIPC shall pay the OIPC Reimbursement Payment on the achievement of Substantial Performance of the Work under the Construction Contract less OIPC's costs and expenses including, without limitation, legal and consultant costs in enforcing all of its rights under the Construction Contract against the Contractor. OIPC shall have a period of one hundred and twenty (120) days from the expiry of the Step-In Period to either cause the Construction Event of Default to be cured or to be satisfied that the Contractor is diligently proceeding to cure the Construction Event of Default, provided if at any earlier point in time within the one hundred and twenty (120) day period OIPC reasonably determines that the Construction Event of Default is not capable of being cured and gives notice of same to the other Parties, then the provisions of Section 8.3(b) shall apply.
- 8.5** There will not be more than one Step-In Period following the issuance by OIPC of any one Construction Default Notice.

- 8.6 OIPC acknowledges and agrees that if OIPC proceeds to exercise its rights as Obligee under the Construction Security, unless OIPC has arranged for a replacement Financing through the Replacement Contractor and/or Project Co or a Substitute Project Co, then OIPC shall be obligated to make the Base Progress Payments subject to and in accordance with the requirements of the Construction Contract.

ARTICLE 9 – PAYMENT DIRECTION OF OIPC REIMBURSEMENT PAYMENT

- 9.1 OIPC acknowledges the assignment by Project Co of the OIPC Reimbursement Payment and any Compensation Payment to Agent under the security granted to Agent by Project Co under the Lending Agreements. Project Co and Contractor hereby irrevocably direct OIPC to pay the OIPC Reimbursement Payment and any Compensation Payment, which becomes payable to Project Co in accordance with the Limited Assignment of Construction Contract, to the Agent and Project Co as directed by the Agent and shall not accept any re-direction without the consent of the Person to whom the Compensation Payment is directed. OIPC will pay to or as directed by Project Co the amount that Project Co is entitled to under the Limited Assignment of Construction Contract once OIPC is satisfied that the conditions for payment contained therein have been satisfied.

ARTICLE 10 – ASSIGNMENT

- 10.1 OIPC may assign or otherwise dispose of the benefit of the whole or part of this Lender's Direct Agreement to any Person to whom OIPC may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 6.2 of the Project Agreement, and shall provide written notice to Project Co and Agent of such assignment or disposition. Such assignee shall assume the obligations and acquire the rights of OIPC under this Lender's Direct Agreement. Upon any such assignment or disposition, OIPC shall be released of all its obligations hereunder. Project Co and Agent shall, at OIPC's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- 10.2 Agent may only assign or otherwise dispose of any interest in this Lender's Direct Agreement as permitted by the Lending Agreements and with the prior written consent of OIPC, such consent not to be unreasonably withheld or delayed. Agent shall cause the assignee to enter into an assumption agreement of this Lender's Direct Agreement in form and substance reasonably satisfactory to OIPC with Project Co, Contractor and OIPC. Project Co, Contractor and OIPC shall, at Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

ARTICLE 11 – NOTICES

11.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a "**Notice**") required or permitted under this Lender's Direct Agreement shall be served by sending the same by facsimile or by hand, as follows:

If to OIPC [DELETED]

with a copy to the OIPC Project Manager at: [DELETED]

with a copy to: MCYS: [DELETED]

If to Agent: [DELETED]

If to Project Co: [DELETED]

If to Contractor: [DELETED]

11.2 Facsimile

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11.2.

11.3 Change of Address

Any Party to this Lender's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11.1 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

11.4 Deemed Receipt of Notices

Subject to Section 11.4(a), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 11.4(a) and 11.4(b), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (a) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a

Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.

- (b) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

ARTICLE 12 – GENERAL

12.1 Amendments

This Lender's Direct Agreement may not be modified, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Lender's Direct Agreement.

12.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Lender's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any such right, power or remedy, in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of the right, power, or remedy or with respect to any other such right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

12.3 Relationship Between Parties

The Parties are independent contractors. This Lender's Direct Agreement is not intended to and does not create or establish between the Parties or between OIPC, MCYS and Contracting Parties any relationship as partners, joint venturers, employer and employee, master and servant or of principal and agent, and does not create or establish any relationship whatsoever between OIPC, PIR or MCYS and any Affiliate, representative or employee of Contracting Parties or Agent.

12.4 Entire Agreement

Except where provided otherwise in this Lender's Direct Agreement, this Lender's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and

understandings, whether oral, written, express or implied, concerning the subject matter of this Lender's Direct Agreement.

12.5 No Reliance

Each of the Parties acknowledges that:

- (a) it has not entered into this Lender's Direct Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any Person, whether a Party to this Lender's Direct Agreement or not, except those expressly made, given or repeated in this Lender's Direct Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Lender's Direct Agreement; and
- (b) this Section 12.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Lender's Direct Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Lender's Direct Agreement.

12.6 Severability

If any provision of this Lender's Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Lender's Direct Agreement. If any such provision of this Lender's Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Lender's Direct Agreement as near as possible to its original intent and effect.

12.7 Enurement

This Lender's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

12.8 Governing Law and Jurisdiction

- (a) This Lender's Direct Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

12.9 Cumulative Remedies

Except as otherwise set forth in this Lender's Direct Agreement, the rights, powers and remedies of each Party set forth in this Lender's Direct Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Lender's Direct Agreement.

12.10 Further Assurance

Each Party shall do all things, from time to time, and execute all further instruments, agreements and documents necessary to give full effect to this Lender's Direct Agreement.

12.11 Costs

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Lender's Direct Agreement.

12.12 Counterparts

This Lender's Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original, faxed or other electronic form provided that any Party providing its signature in faxed or other electronic form shall promptly forward to such Party an original signed copy of this Lender's Direct Agreement which was so transmitted.

12.13 Language of Agreement

Each Party acknowledges having requested and being satisfied that this Lender's Direct Agreement and related documents be drawn in English. *Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglaise et s'en declare satisfaite.*

12.14 Confidentiality

Agent shall comply with the obligations on the part of Contracting Parties contained in Article 5 of the Project Agreement and this obligation shall survive the termination of this Lender's Direct Agreement.

Signature Page Follows

IN WITNESS WHEREOF the Parties have executed this Lender's Direct Agreement as of the date first above written.

ONTARIO INFRASTRUCTURE PROJECTS CORPORATION, as agent for Her Majesty The Queen in Right of Ontario as represented by the Minister of Public Infrastructure Renewal

Per: _____

Name: [DELETED]

Title: [DELETED]

Per: _____

Name: [DELETED]

Title: [DELETED]

CIT GROUP SECURITIES (CANADA) INC.

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

BIRD GTAYC INC.

Per: _____

Name: [DELETED]

Title: [DELETED]

I have authority to bind the corporation.

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BIRD CONSTRUCTION COMPANY, by its
general partner, **BIRD MANAGEMENT LTD.**

Per: _____

Name: [DELETED]

Title: [DELETED]

I have authority to bind the corporation.

SCHEDULE 4

[Note: The contents of Schedule 4 have been removed in its entirety due to its confidentiality and commercial sensitivity.]