

**Report to
Rapport à la:**

**Transit Commission
Commission du transport en commun
14 September 2015 / 14 septembre 2015**

**and Council
et au Conseil
23 September 2015 / 23 septembre 2015**

**Submitted on September 1, 2015
Soumis le 1 septembre 2015**

**Submitted by
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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2015-CMR-OCM-0018

SUBJECT: OTTAWA LIGHT RAIL REGULATORY FRAMEWORK

OBJET: CADRE RÉGLEMENTAIRE DU TRAIN LÉGER D'OTTAWA

REPORT RECOMMENDATIONS

That Transit Commission recommend that Council approve:

- 1. The establishment of the position of the Light Rail Regulatory Monitor and Compliance Officer for the City’s Light Rail Transit System as described in this Report;**
- 2. The delegation of authority to the City Manager to prepare and submit the annual regulatory filing on the Ottawa Light Rail Transit System to Transport Canada; and**
- 3. The delegation of authority to the City Manager to enter into a services/support contract with an external third party to provide independent investigation services associated with the Ottawa Light Rail Transit System.**

RECOMMANDATIONS DU RAPPORT

Que la Commission du transport en commun recommande au Conseil municipal d’approuver :

- 1. La création du poste d’agent de vérification de la conformité réglementaire du train léger pour le réseau de train léger de la Ville d’Ottawa, comme décrit dans le présent rapport;**
- 2. La délégation de pouvoirs au directeur municipal pour qu’il prépare et présente le rapport réglementaire annuel sur le réseau de train léger de la Ville d’Ottawa à Transports Canada;**
- 3. La délégation de pouvoirs au directeur municipal pour qu’il conclue un contrat de services ou de soutien avec un tiers, qui fournira des services d’enquête indépendants relativement au réseau de train léger de la Ville d’Ottawa, si le directeur municipal le juge nécessaire.**

EXECUTIVE SUMMARY

Assumption and Analysis

As required by the 2014-2018 Governance Review approved by Council on December 3, 2014, this report and accompanying by-law is coming forward to establish the regulatory role – referred to as the Regulatory Monitor and Compliance Officer (“Compliance Officer”) – required as part of the Regulatory Framework, which includes the Safety Management System and the Security Management System for Ottawa’s

Light Rail Transit System. This report and by-law also establishes various accountabilities for municipal light rail systems under the jurisdiction of the City of Ottawa.

The Ottawa Light Rail Transit System (OLRT) is considered in law to be a federal rail transportation undertaking; however, federal legislation and regulations have not been developed for application to municipal light rail systems, and Transport Canada is not organized administratively to provide active regulatory oversight for these kinds of municipal transit systems. As such, the City has been delegated the authority to:

- develop, implement and enforce a comprehensive regulatory framework for the safety and security of Ottawa Light Rail Systems;
- assume responsibility and accountability in respect of the development, implementation and enforcement of the regulations; and,
- establish procedures that require that compliance with the regulations be monitored and reported on by an independent internal auditor or other responsible City official.

This report outlines the framework through which the Transit Services Department and the City will fulfill its regulatory obligations under the Transport Canada Delegation Agreement (“Delegation Agreement”) and related legislation. This report also recommends the establishment of a Light Rail Regulatory Monitor and Compliance Officer (Compliance Officer) position to specifically address the Delegation Agreement requirement to have an independent internal auditor or other responsible City official to monitor and report on the City’s compliance with the OLRT regulations.

Financial Implications

There are forecasted capital funds for the development and implementation of the regulatory function up to 2018. The operating costs associated with this function will be included in OC Transpo’s operating budget post 2018.

Public Consultation/Input

This report’s recommendations are consistent with the Delegation Agreement and the Confederation Line Project Agreement (“Project Agreement”).

There has been ongoing discussion within the Regulatory Working Group (“Working Group”), which consists of representation from Rideau Transit Group, Rideau Transit Maintenance, the Rail Implementation Office, Transit Services and Legal Services, as

well as with external legal counsel (Borden Ladner Gervais LLP) and subject matter experts/rail consultants.

BACKGROUND

On July 14, 2011, Council approved the implementation plan for the Ottawa Light Rail Transit (OLRT) project: (ACS2011-ICS-RIO-0002). As indicated at the time, the Ottawa Light Rail System is considered in law to be a federal rail transportation undertaking; however, federal legislation and regulations have not been developed for application to municipal light rail systems, and Transport Canada is not organized administratively to provide active regulatory oversight for these kinds of transit systems. At the time of Council approval, the City and Transport Canada had been working together on a unique arrangement to permit the City of Ottawa to regulate its light rail system; and, as a result of those discussions, Council also authorized the City to finalize a regulatory agreement with the Federal Government at its meeting on July 14, 2011.

The resultant Transport Canada Delegation Agreement (Delegation Agreement), listed as Document 1 and made effective on October 1, 2011, includes provisions for the development, adoption, monitoring and enforcement of City rail transit regulations pursuant to a delegated regulation model. This is a new model and is unique in two ways: it is the first municipal light rail system to be federally-regulated, and it is the first municipal light rail system for which federal regulatory authority has been delegated to the municipality. It is worth noting that this delegated authority does not extend to other OC Transpo operations, (ie: Trillium Line, Bus, Para). The Delegation Agreement highlights include the City's authority to develop, implement, monitor and enforce a comprehensive regulatory framework for the safety and security of the OLRT. This authority and responsibility includes the adoption of procedures that ensure that compliance with the regulations are monitored and reported on by an independent internal auditor or other responsible City official. In alignment with the Delegation Agreement, the Confederation Line Project Agreement ("Project Agreement") between the City and Rideau Transit Group (RTG) also recognizes the City's rail transit regulatory function.

The Delegation Agreement also references the independent role for monitoring and reporting on regulatory compliance mentioned above and is one component of the overarching Safety Management System (SMS) and Security Management System (SeMS) for the OLRT. The two systems constitute a formal framework that integrates safety and security into day-to-day railway operations. It includes safety goals and performance targets, risk assessments and responsibilities, and it outlines the

authorities, rules and procedures as well as the monitoring and evaluation processes necessary to maintain and operate a safe light rail system. The Regulatory Working Group (“Working Group”), which is comprised of City staff from Transit Services, the Rail Implementation Office and Legal Services, representatives from RTG and subject matter expert/rail consultants (as required), has been working on the development of these two systems.

The “2014-2018 Governance Review” (Report: ACS2014-CMR-CCB-0062), approved by Council on December 3, 2014, included a subsection entitled, “Confederation Line – Regulatory Framework.” In short, this section summarized the next steps for the OLRT as Council approved the following two items at Recommendation 5 of the report:

5 a) The establishment of the Office of the Regulator for the Confederation Line, in principle, as described in this report and as represented in Document 12; and...

b) That the Regulatory Working Group, in consultation with the City Manager and relevant senior management of the City, be directed to develop the necessary instruments, including by-law(s), to establish the position and duties of the Regulator, to be brought forth to the Transit Commission and Council for their consideration by the end of Q1 of 2015, in accordance with this report and in keeping with the 2011 Transport Canada Delegation of Authority agreement.

Therefore, the purpose of this report is to respond to Recommendation 5 above. It is to be noted that competing priorities (i.e. Budget in March 2015 and Strategic priorities in July 2015) resulted in the delay of this report.

DISCUSSION

After further review of the intent and purpose of the Delegation Agreement and the Project Agreement in consultation with the Working Group, senior staff as well as external legal counsel (Borden Ladner Gervais LLP), certain modifications have been made to the approach outlined in the 2014-2018 Governance Review Report.

As referenced above, in exercising its powers and authority within the Delegation Agreement the City, through the City Manager, is acting as regulator of the OLRT. Accordingly, the City of Ottawa does not have to create a new regulator position and role.

In this regulatory role, the City, as regulator, has the responsibility for developing, implementing and enforcing the regulations, while an independent internal auditor or other responsible City official (previously referred to as the “Office of the Regulator” in

the Governance Report in December, 2014), must monitor and report on compliance with the LRT regulations. In an effort to avoid any confusion with the City's broadened regulatory role, this new position has been re-named as the Light Rail Regulatory Monitor and Compliance Officer ("Compliance Officer"). The Compliance Officer duties include monitoring and reporting on compliance with the OLRT regulations as described in this report.

Furthermore, the City Manager was identified as the "*Accountable Executive*" in the 2014-2018 Governance Review Report. The term "*Accountable Executive*" is a legislated role associated with Transport Canada-regulated heavy rail freight and long range or commuter passenger rail systems and encompasses responsibilities not associated with municipal light rail systems. Using this terminology might have created some confusion for OLRT. Therefore, in respect to the OLRT, the City Manager will also be known as the executive responsible for the ongoing development, implementation and compliance with the OLRT safety and security regulations. In addition, the City Manager will also co-ordinate all reporting activities with the Compliance Officer in order to ensure that any deficiencies or gaps in regulatory issues are dealt with by City staff.

In respect to the O-Train Trillium Line, the Railway Safety Management System Regulations, 2015 ("Regulations") came into force for all railway companies on April 1, 2015. The Regulations include new requirements for a company's safety management system, such as the appointment of an *Accountable Executive* who is responsible for the operations and activities of the railway company and accountable for compliance with the safety management system requirements.

The Regulations apply to all companies that fall under the *Railway Safety Act*, including federal and local railway companies. In Section 2 of the Regulations, it notes that the stated purpose of these federal regulations are to "..... *establish the minimum requirements with respect to the safety management system that a company must develop and implement for the purpose of achieving the highest level of safety in its railway operations.*"

The position of Accountable Executive is responsible for the operations and activities of the railway company to be accountable for the extent to which the requirements of the safety management system are met, including the effectiveness in achieving the highest level of safety in its railway operations.

With the coming into force of the new Regulation on April 1, 2015, Capital Railway received notification from Transport Canada that an Accountable Executive must be appointed together with the filing of a signed declaration for Capital Railway. In light of

these short timelines, the City Manager, pursuant to Section 7 of the Delegation of Authority By-law (2014-435 as amended), on May 19, 2015, took steps to file the required documentation necessary as the Accountable Executive of the O-Train/Trillium Line and has filed the declaration of the Accountable Executive that the City Manager accepts accountability for Capital Railway meeting the requirements of its safety management system.

As regulator of light rail transit, the City, acting through the City Manager, will continue to exercise regulatory oversight for the design, construction, operation, maintenance, safety and security of the OLRT. The first phase of light rail transit in the City is the Confederation Line. City Council will receive monitoring reports regarding regulatory compliance, and where necessary may seek information about compliance problems, evaluate that information when received, and monitor the implementation and effectiveness of corrective action plans when compliance issues are detected. Knowledge about the effectiveness of regulations as well as reports of compliance issues will come from the Compliance Officer or from information about operations gained in the course of regular reporting from Transit Services. In those instances where regulatory enforcement actions are required, City Council may direct the City Manager to initiate changes in operating practices, direct external reviews, undertake changes to the organization, or implement other actions to correct the compliance issue. The nature of the enforcement will depend on the type of compliance issue that is detected.

Set out in the subsection below are the Compliance Officer's responsibilities and duties, as well as accountability, reporting and operating requirements for the Compliance Officer and other directly-related roles. It also outlines the selection/appointment process for the Compliance Officer, and the instruments and timelines needed to formally establish this position.

Light Rail Regulatory Monitor and Compliance Officer (Compliance Officer) - Responsibilities and Duties

The Compliance Officer is a position independent of Transit Services and the Rail Implementation Office that reports to City Manager and to City Council on issues of regulatory compliance for the OLRT. The Delegation Agreement requires that the Compliance Officer report to the City Manager. Senior Management, in the Governance Report, sought and obtained a further requirement that, in addition to reporting to the City Manager, he/she reports to Council.

The Compliance Officer will review, investigate, monitor and report on compliance with the OLRT regulations. The Delegation Agreement defines *Regulations* as bylaws, guidelines, policies, regulations, rules, standards, safety management systems and/or security management systems, or similar, adopted by the City from time to time in relation to the regulation of the design, construction, operation, safety and security of, as well as the rates and conditions of service of, the OLRT.

Specifically, the Compliance Officer will undertake the following activities:

- Establish protocols and procedures necessary to conduct his/her duties;
- Develop a multi-year workplan for monitoring OLRT regulations as it relates to the safety and security of the system;
- Monitor the regulatory compliance of the OLRT through site visits, interviews with field operations and maintenance staff, reviews with senior organizational personnel, review of documentation and records, and review of performance reporting;
- Co-ordinate monitoring and reporting activity through the City Manager. This will include identification and quarterly reporting of any potential regulatory compliance gaps to the City Manager in order for City staff to correct any compliance deficiencies. Similarly, any unresolved serious issues that are identified by the City Manager through the quarterly monitoring should be escalated to City Council in advance of the Compliance Officer Annual Report; and,
- Report annually on regulatory compliance to Transit Commission and City Council in concert with reporting of any required corrective action plans by Transit Services and other relevant persons who may be subject to the Regulations. An annual compliance report will be provided to outline regulatory areas where compliance has been fully achieved or where there may be gaps in adherence, which form and content will be approved by Council.

Knowledge, Skills and Experience Required

To be successful the Compliance Officer position should be filled by an experienced public transit professional. The selection and recruitment process will target individuals with strong practical experience with operations and maintenance of light rail systems, specialist knowledge in the area of system safety processes, and experience with regulatory environments for municipal or urban light rail systems.

Annual Regulatory Filing to Transport Canada

Pursuant to the Delegation Agreement, the City is required to provide an annual regulatory filing with Transport Canada one year after the railway's initial operation and thereafter on or before March 31 of each year. The annual filing will summarize the safety and security accidents and incidents relative to the railway since the last annual filing; outline any adopted or proposed changes to the Regulations to address these matters; describe any other remedial measures taken since the previous annual report filing; and provide an evaluation of the effectiveness of the Regulations.

The Delegation of Authority By-law (2014-435, as amended) does not address the annual regulatory filing required under the Delegation Agreement. Therefore, the City Manager will remain the executive responsible for the ongoing compliance with the Regulations, including the safety and security management systems associated with the OLRT and the coordination of reporting activity with the Compliance Officer in order to ensure that any deficiencies or gaps in regulatory issues are dealt with by City staff. As such, staff are recommending that the City Manager be delegated the authority to prepare and submit the annual regulatory filing to Transport Canada.

Reporting and Accountability

In addition to the annual reporting described above, there will be continuous oversight and additional reporting structures that demonstrate the City's commitment to safety and security of the OLRT.

Transit Services, as part of delivering light rail transit service, will implement a series of processes to identify and report hazards and safety concerns, monitor safety and security performance, and implement corrective action plans to address system issues as part of a continuous improvement model. These processes will be undertaken and led by employees at all levels of the organization and will be codified in the Safety Management System and Security Management System.

The Compliance Officer will also co-ordinate site visits to monitor regulatory compliance. The site visits will be co-ordinated with the City Manager in order to ensure that the Compliance Officer has full access to all areas of the site and to ensure that there are open lines of communication between the Compliance Officer and the City Manager on potential areas of concern. This interface will be important to ensure that any gaps or issues that are identified by the Compliance Officer are addressed by the City Manager.

Transit Services' annual performance report to Transit Commission will be updated to include details on safety and security performance on the Ottawa Light Rail System.

In addition to the above, and as required by the Delegation Agreement, Transit Services will undertake triennial audits on the OLRT Safety Management System and Security Management System. These are broad based audits which will be led by a third party reviewer and will be used to ensure that all elements of the safety and security plans have been fully implemented. The audits will take place after the first year of operations and then every three years after that. The outcomes from the report will be used to update and revise these systems.

The Compliance Officer will submit to City Council an Annual Compliance Report that details the specific areas of these systems that were reviewed during the past year; report on the work that was undertaken to verify compliance in these areas; identify areas where compliance with Regulations has been fully achieved; and report on areas where compliance has not been fully achieved.

Governance

After preparing a draft of the report and taking input from affected persons as determined necessary, the Compliance Officer shall provide written notice to Council of the tabling of the Annual Compliance Report with Transit Commission and will provide the City Manager with a draft copy of the Annual Compliance Report no less than 30 days prior to the provision of notice. The City Manager will prepare a management response to the Annual Compliance Report (Management Response Companion Report). Both the Compliance Officer Annual Compliance Report and the Management Response Companion Report will be received and considered first by Transit Commission, then by Council at a subsequent date.

The form and required content of the Compliance Officer Annual Compliance Report will be set out in the multi-year Compliance Officer's workplan approved by Council. The workplan will detail the strategy for the selection and planning of regulations, rules, and procedures to be monitored, the overall methodology to undertake monitoring and reporting, the specific regulatory areas to be monitored, and the timeframes for undertaking the work. Staff recommend that the Compliance Officer submit his/her initial workplan for Council approval three months prior to revenue service. Subsequently, each Compliance Officer Annual Compliance Report will contain, for Council approval, a revised multi-year workplan.

Independent Investigation Services

As Regulator (and operator), the City has the responsibility to investigate occurrences or incidents during the operation of the OLRT that potentially affect the safety and security of the OLRT system, the passengers, or the general public. This view of the City's responsibility has been confirmed by external legal counsel, Borden Ladner Gervais LLP.

In the course of routine operations where low severity occurrences or incidents may take place, Transit Services will have responsibility for undertaking investigations as part of fulfilling its obligations under the Safety Management System. In rare instances, where the severity of an occurrence or incident necessitates a review that is independent of Transit Services, the City Manager will have responsibility to initiate an independent investigation. In light of this responsibility, staff is seeking delegated authority for the City Manager to enter into a services/support contract with an external third party, if determined necessary by the City Manager, to provide independent investigation services to the City. This delegation of authority will enable the City to promptly enter into a contract and have the independent investigation completed in a thorough and timely manner, making any necessary adjustments in order to ensure the safety and security of passengers, staff and the general public.

Compliance Officer Selection/Appointment Process and Timelines

Staff is recommending that in Q2 of 2017, City Council establish a Light Rail Regulatory Monitor and Compliance Officer Hiring Panel (the "Hiring Panel"), consisting of the Mayor (Chair), Deputy Mayors (2), the Chair of the Transit Commission and the Chair of the Transportation Committee. The Hiring Panel will engage an external firm to establish and implement an independent search process that would identify candidates of high quality. The Hiring Panel will conduct interviews with potential candidates. The City Clerk and Solicitor's Office will provide the required administrative support to the Hiring Panel. The Hiring Panel will report back to City Council by Q3 of 2017 to make recommendations for the selection of the new Compliance Officer. Council will appoint the Compliance Officer following the recommendation by the Hiring Panel.

A minimum term of four years will enable the Compliance Officer to monitor compliance with the triennial audit reporting cycle and also to use the findings from the audit cycle to help guide the content of updated work plans for selection of future monitoring and reporting areas. In light of the reporting cycle identified above, staff is recommending that the Compliance Officer be appointed for a five year term with any renewal thereof to be determined by Council.

Resource Commitment

The Compliance Officer position will require an annual commitment of approximately 16 weeks for on-site reviews with Transit Services staff, City Manager, Transit Commission and Council as well as off-site preparations. Any travel and accommodation and administrative costs will also be considered. In the initial year, a block of time will also be required for onboarding and familiarization of the Compliance Officer.

Light Rail Regulatory Monitor and Compliance Officer and LRT Regulation By-law No. 2015-[x] (Document 2)

Staff is recommending that a by-law be enacted to accomplish the following:

- To establish the position and duties of the Compliance Officer for light rail transit systems under the jurisdiction of the City of Ottawa; and,
- To provide for other regulatory matters in relation to light rail transit systems within the jurisdiction of the City.

The by-law will provide the following elements to accomplish these objectives including:

- Council to appoint the Compliance Officer who is independent of Transit Services and the Rail Implementation Office;
- The duties of the Compliance Officer, including to review, investigate, and monitor City's compliance with the OLRT Regulations, report quarterly with the City Manager regarding compliance with the Regulations, and report annually to Council regarding compliance with the Regulations;
- The role of the City Manager with respect to development, adoption, compliance and enforcement with the OLRT Regulations; and
- The duty to furnish information to the Compliance Officer, the Compliance Officer's authority to access information, and requirements for confidentiality.

Sections of the by-law specifically outlining the duties and responsibilities associated with the role of the Compliance Officer shall come into force and effect on the date Council appoints the Compliance Officer. All other sections of the by-law shall come into force and effect upon enactment.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

This report's recommendations are consistent with the Transport Canada Delegation Agreement and the Confederation Line Project Agreement. The Office of the City Clerk and Solicitor as well as Finance have been consulted throughout the development of the report and proposed by-law.

In accordance with Council direction, there has been ongoing discussion within the Regulatory Working Group, which consists of representation from Rideau Transit Group, Rideau Transit Maintenance, the Rail Implementation Office, Transit Services and Legal Services, as well as with external legal counsel (Borden Ladner Gervais LLP).

ADVISORY COMMITTEE(S) COMMENTS

This report has not been considered by advisory committees.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations in this report. The report provides the regulatory framework in which Legal Services has provided legal assistance in developing, together with external counsel, Borden Ladner Gervais, LLP, which is consistent with the Transport Canada Delegation Agreement, the Project Agreement and with other light rail municipal systems.

RISK MANAGEMENT IMPLICATIONS

Risk implications have been identified and explained in the report, and are being managed by appropriate staff.

FINANCIAL IMPLICATIONS

Capital funding in the amount of \$250,000 for the development and implementation of the regulatory function has been included in the Capital Budget and Forecast approved by Council on March 11, 2015 up to 2018. Operating costs estimated at \$250,000 associated with this function will be included in OC Transpo's Draft Operating Budget estimates for Commission & Council consideration post 2018.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

TERM OF COUNCIL PRIORITIES

The recommendations in this report support the following 2015-2018 Term of Council priorities:

Governance, Planning and Decision-Making – Achieve measurable improvement in residents' level of trust in how the City is governed and managed, apply a sustainability lens to decision making, and create a governance model that compares well to best-in-class cities around the world.

Service Excellence – Improve client satisfaction with the delivery of municipal services by measurably strengthening the culture of service excellence at the City, by improving the efficiency of City operations, and by creating positive client experiences.

Healthy and Caring Communities – Help all residents and visitors enjoy a good quality of life and a sense of community well-being by providing healthy, safe, secure, accessible and inclusive places and services.

SUPPORTING DOCUMENTATION

Supporting documents immediately follow the Report.

Document 1 – Transport Canada Delegation Agreement, dated October 1, 2011

Document 2 – Light Rail Regulatory Monitor and Compliance Officer and LRT Regulation Draft By-law No. 2015-[x]

DISPOSITION

Upon Council's approval of this report's recommendations, staff will undertake to establish the position of the Regulatory Monitor and Compliance Officer as described in this report, and Legal Services will prepare the final version of the by-law, substantially in the form attached as Document 2, for Council's subsequent approval.

Document 1

Transport Canada Delegation Agreement

THIS AGREEMENT made effective as of the 1st day of October, 2011 FOR REGULATION OF THE DESIGN, CONSTRUCTION, OPERATION, SAFETY AND SECURITY OF OTTAWA LIGHT RAIL TRANSIT SYSTEM.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA (“CANADA”), as represented by the Minister of Transport

OF THE FIRST PART

AND:

CITY OF OTTAWA (hereinafter referred to as “**CITY**”)

OF THE SECOND PART

WHEREAS, the CITY is planning the design, construction and operation of a light rail transit system, including the regulatory oversight of related safety and security matters (as defined below; the “**RAILWAY**”);

AND WHEREAS the planned RAILWAY is a “*railway*” within the meaning of the *Canada Transportation Act*, S.C. 1996 c. 10 (“**CTA**”);

AND WHEREAS, Section 158 of the CTA provides the MINISTER with the authority to enter into an agreement with a provincial authority to authorize the provincial authority to regulate the design, construction, operation, safety and security of a railway as well as the rates and conditions of service in the same manner and to the same extent as it may regulate a railway within its jurisdiction;

AND WHEREAS, pursuant to section 12.17 of the *City of Ottawa Act*, 1999, S.O. 1999, c. 14, Sched. E and the *Municipal Act*, 2001, S.O. 2001, c. 25, the CITY has authority to operate and maintain a passenger transportation system;

AND WHEREAS, the MINISTER and the CITY, a provincial authority, agree that the City should be authorized to regulate the design, construction, operation, safety and security of, as well as the rates and conditions of service of, the RAILWAY in the same manner and to the same extent as the CITY may regulate a railway within its jurisdiction;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual terms and conditions hereinafter specified, the PARTIES agree as follows:

1. DEFINITIONS

- 1.1. **“CAPITAL RAILWAY”** (O-Train) means the railway owned and operated by the CITY, for which the CITY has been issued a Certificate of Fitness under the CTA.
- 1.2. **“MINISTER”** means the Minister of Transport.
- 1.3. **“MINISTER’S DELEGATE”** means the Deputy Minister, the Assistant Deputy Minister, the Associate Deputy Minister, the Assistant Associate Deputy Minister, the Director General responsible for rail security or the Director General responsible for rail safety.
- 1.4. **“PARTY”** means CANADA or the CITY.
- 1.5. **“PARTIES”** means CANADA and the CITY.
- 1.6. **“RAILWAY”** means any light rail transit system designed, constructed, operated and/or maintained by, or on behalf of, the CITY, including any expansions or modifications made thereto, and located generally within the CITY and between any point in the CITY and any point outside the CITY including any point outside Ontario. For greater certainty for the purposes of this Agreement, RAILWAY does not include the CAPITAL RAILWAY.
- 1.7. **“REGULATIONS”** means the bylaws, guidelines, policies, regulations, rules, standards, safety management systems and/or security management systems, or similar, adopted by the CITY from time to time in relation to the regulation of the design, construction, operation, safety and security of, as well as the rates and conditions of service of, the RAILWAY as provided for in Section 2.2

2. AUTHORIZATION

- 2.1. The CITY is authorized to regulate any matters covered by Part III and IV of the *Canada Transportation Act* as well as the *Railway Safety Act* relating to the design, construction, operation, safety and security of the RAILWAY as well as the rates and conditions of service in the same manner and to the same extent as the CITY may regulate a railway within its jurisdiction.

- 2.2. For greater certainty, and without limiting the generality of section 2.1, the CITY may exercise any of the following:
- (a) adopt, enact, modify and administer the Regulations for the RAILWAY as the CITY determines appropriate from time to time;
 - (b) approve the design, construction and operation from time to time of any new, supplemental or modified RAILWAY including any extension or modification, crossing, grade separation, tunnel or other RAILWAY related facilities or works; and
 - (c) apply the REGULATIONS to any person involved in the design, construction, operation, safety and security and/or use of the RAILWAY including any contract operators, suppliers, contractors or service providers.
- 2.3. Until this Agreement is terminated, section 2.1 has, for the purpose of the application of the RSA and Parts III and IV of CTA, the effect of treating the RAILWAY as if the Railway is not a “railway” within the meaning of the CTA and RSA.
- 2.4. This Agreement does not modify, limit or restrict in any way the powers and authorities of the CITY under provincial and municipal legislation, including by way of illustration and for further clarification, the power and authority of the CITY to apply, use and rely upon provincial expropriation legislation for its Railway and related purposes.

3. TERMS AND CONDITIONS

- 3.1. Prior to construction of the RAILWAY, the CITY shall develop, implement and enforce a comprehensive regulatory framework for the safety of the RAILWAY based on codes, standards, practices, design references, safety principles and guidelines generally recognized and/or adopted by other municipal light rail system operators in respect of similar systems and/or by established professional or technical railway associations, including the American Public Transportation Association (APTA) or International Railway Industry Standard (IRIS) as adapted to North American operating conditions.
- 3.2. Prior to construction of the RAILWAY, the CITY shall develop, implement and enforce a comprehensive regulatory framework for the security of the RAILWAY based on codes, standards, practices, design references, construction standards, security principles and guidelines recognized

and/or adopted by other municipal light rail operators in respect of similar systems and/or by established professional or technical railway associations, including American Public Transportation Association (APTA) or International Railway Industry Standards (IRIS) as adapted to North American operating conditions.

- 3.3. Prior to construction of the RAILWAY, the CITY as operator of the RAILWAY will become a signatory to the Memorandum of Understanding on Security, as renegotiated from time to time, between Transport Canada and the Railway Association of Canada.
- 3.4. The CITY shall assume all responsibility and accountability in respect of the development, implementation and enforcement of the REGULATIONS.
- 3.5. The CITY shall establish procedures that require that compliance with the REGULATIONS be monitored and reported on to the City Manager or designate by an independent internal auditor or other responsible CITY official. The CITY shall ensure that any occurrences or incidences of non compliance with the Regulations are appropriately managed.
- 3.6. The RAILWAY shall not include any crossings at grade with federally regulated railways without the prior written approval of the MINISTER or the MINISTER'S DELEGATE, who may, at their sole discretion, refuse to provide such approval.

4. REPORTING

- 4.1. The CITY shall:
 - (a) ensure that a Safety Management System (SMS) audit, based on ISO 19011 Guidelines for Quality and Environmental Management Systems Auditing, or equivalent international standards with respect to all oversight matters related to the safety of the RAILWAY is conducted one year after the RAILWAY's initial operation and thereafter at least every 3 years by a qualified person or organization operating independently from the CITY;
 - (b) within 60 days of each SMS audit, provide the MINISTER with a report, satisfactory in content and form to both PARTIES as determined at least 6 months before the RAILWAY's initial operation and consistent with common industry practice for such audit forms, on the results of the SMS audit; and

- (c) within 90 days of each SMS audit, provide to the MINISTER a plan for corrective measures the CITY intends to take as a result of the SMS audit, if any, as well as timeline for the implementation of those corrective measures.

4.2. The CITY shall:

- (a) ensure that a Security Management System (SeMS) audit with respect to all oversight matters related to the security of the RAILWAY is conducted one year after the RAILWAY's initial operation and thereafter at least every 3 years by a qualified person or organization operating independently from the CITY;
- (b) within 60 days of each SeMS audit, provide the MINISTER with a report, satisfactory in content and form to both PARTIES as determined at least 6 months prior to the RAILWAY's initial operation and consistent with common industry practice for such audit forms on the results of the SeMS audit; and
- (c) within 90 days of each SeMS audit, provide to the MINISTER a plan for corrective measures the CITY intends to take as a result of the SeMS audit, if any, as well as timeline for the implementation of those corrective measures.

4.3. The City shall:

- (a) file with the MINISTER an annual safety and security report (the ANNUAL REPORT) with respect to the RAILWAY, to be first filed one year after the RAILWAY's initial operation and thereafter on or before every March 31 after this Agreement is made; and
- (b) the ANNUAL REPORT will: (i) summarize the safety and security accidents and incidents relative to the RAILWAY from the period since the last ANNUAL REPORT; (ii) outline any changes made by the CITY to the REGULATIONS to specifically address these matters; (iii) describe other remedial measures taken in respect of these matters since the last ANNUAL REPORT; and (iv) generally provide an evaluation of the effectiveness of the Regulations in protecting the safety and security of the public in relation to the RAILWAY.
- (c) Upon the request of the MINISTER, the CITY shall provide to the MINISTER any other reports or information related to the RAILWAY to

which the MINISTER would, but for this agreement, be lawfully entitled to request or receive.

5. SECURITY THREATS

- 5.1. If the MINISTER becomes aware of a significant security threat to the RAILWAY or the public in any way resulting from or relating to the Railway the PARTIES shall collaborate to ensure that the CITY takes appropriate action to address the risk.
- 5.2. Where the risk has not been addressed to the satisfaction of the MINISTER or the MINISTER'S DELEGATE, the MINISTER or the MINISTER'S DELEGATE may provide instructions to the CITY to address the risk and the CITY shall comply with those instructions from the MINISTER or one of these delegates.

6. LIABILITY AND INDEMNIFICATION

- 6.1. CANADA, its officers, servants, employees and/or agents shall not be held liable by the CITY, or its officers, servants, employees and/or agents for any injury, including death to any person, for any loss or damage to property of any person or the environment, or for any obligation of the CITY or anyone else, by reason of this Agreement or the performance or non performance by the CITY of its obligations, or the exercise or the non exercise of its rights, under this Agreement.
- 6.2. The CITY shall at all times indemnify and save harmless CANADA and its officers, servants, employees and/or agents, from and against all actions, whether in contract, tort, or otherwise, claims and demands, losses, costs, damages, suits or other proceedings by whomsoever brought or prosecuted in any manner against CANADA, its officers, servants, employees and/or agents based upon, or occasioned by any injury to any person, including but not limited to damage to or loss or destruction of property, economic loss or infringement of rights caused by, in connection with, or arising directly or indirectly by reason of this Agreement or the performance or non-performance by the CITY of its obligations, or the exercise or non exercise of the CITY's rights, under this Agreement, including but not limited to:
 - (a) the development, adoption, implementation or omission thereof, or the compliance or non compliance with, or the enforcement (or lack thereof), or the manner of enforcement of, the Regulations;

(b) any negligent omission, willful misconduct, or negligent act or other unlawful or actionable conduct or behaviour of the CITY, its officers, servants, employees and/or agents; and

(c) any actions taken or not taken by the MINISTER or the MINISTER'S DELEGATE pursuant to section 5 (Security Threats) of this Agreement.

except to the extent to which such claims, demands, losses, costs, damages, actions, suits, or other proceedings relate to, arise from, are caused by or are otherwise connected to any negligent omission, willful misconduct, or negligent or other unlawful or actionable conduct or behavior of an officer, servant, employee, or agent of the CANADA in the performance of his or her duties.

7. DISPUTE RESOLUTION

7.1. The PARTIES shall attempt to resolve any disputes arising out of or pursuant to this Agreement through collaborative discussions between the PARTIES' representatives. Where the PARTIES' representatives cannot agree on a solution to the dispute, the matter shall be referred to the Assistant Deputy Minister or Deputy Minister of Transport and Deputy City Manager or City Manager for resolution.

7.2. If the PARTIES are not able to resolve the dispute pursuant to section 7.1 then the matter shall be referred to the MINISTER and to the City Mayor for resolution.

8. COMMUNICATIONS

8.1. The PARTIES shall use reasonable efforts at all times to coordinate any press release or public announcement relating to this Agreement as early as possible with the other PARTY.

8.2. The PARTIES shall use reasonable efforts at all times to endeavor to ensure that the form and content of any press release or public announcement will be approved by the other PARTY.

8.3. Except in the event of an unforeseen and urgent circumstances, the PARTIES agree that all press releases and public announcements will be bilingual.

8.4. Each PARTY shall provide copies of all communications which have not been subject to the coordinated efforts described in 8.1 to the other PARTY as soon as possible after the issuance of the communication.

9. AGREEMENT

9.1. This Agreement constitutes the whole Agreement and shall be binding upon both PARTIES as of the effective date of October 1, 2011. No prior document, negotiation, provision, undertaking or agreement in relation to the subject of the Agreement has legal effect.

10. AMENDMENTS

10.1. Proposals for changes to this Agreement may be made at any time by either PARTY and appropriate amendments made as agreed upon by the PARTIES in writing.

11. BENEFITS

11.1. This Agreement shall enure to the benefit of THE CITY OF OTTAWA and HER MAJESTY THE QUEEN in right of Canada. This agreement may not be assigned.

12. TERMINATION

12.1. This Agreement shall terminate:

- (a) On a date determined by the MINISTER, in its sole discretion;
- (b) Upon the CITY providing 150 days written notice of termination to the MINISTER; or
- (c) On a date agreed upon by the PARTIES.

13. NOTICE

13.1. All information or documents required or desired to be given pursuant to this Agreement may be given to the CITY by delivery or mail addressed to:
Deputy City Manager
Infrastructure Services and Community Sustainability
110 Laurier Avenue West
Ottawa, ON K1P 1J1
Telephone: (613) 580-2424 (ext. 12230)
Facsimile: (613) 560-6028

13.2. All information, reports or other documents required or desired to be given pursuant to this Agreement may be given to the MINISTER by delivery or

main addressed to:
Director General
Rail Safety
Transport Canada
427 Laurier Avenue West, 14th Floor
Ottawa, ON K1A 0N5
Telephone: (613) 998-2984
Facsimile: (613) 990-1169

- 13.3. Except for matters arising under Part V of the CTA, any enquiries, complaints, or other communications that may be directed to or otherwise received by CANADA or its representatives from any person in relation to the RAILWAY or the Regulations, including any noise or vibration or similar complaints received by the Canada Transportation Agency, shall be forwarded by CANADA to the CITY to the following address:

Deputy City Manager
Infrastructure Services and Community Sustainability
City of Ottawa
110 Laurier Avenue West
Ottawa, ON K1P 1J1
Tel: (613) 580-2424

14. GOVERNING LAW

- 14.1. This Agreement shall be governed by and shall be construed in accordance with the Laws of Ontario, and the Laws of Canada applicable therein.

15. COUNTERPART SIGNING

- 15.1. This Agreement may be signed in counterpart by the Parties.

IN WITNESS WHEREOF the parties here to have executed this Agreement.

SIGNED, SEALED AND DELIVERED on behalf of the City of Ottawa in the presence of:

[original signed by Mayor, Jim Watson]

Witness

The City of Ottawa; as represented by
the Mayor

Date

SIGNED, SEALED AND DELIVERED on behalf of Her Majesty the Queen in right
of Canada in the presence of:

Witness

Her Majesty the Queen in Right of
Canada as represented by the Minister
of Transport

Date

Document 2**Light Rail Regulatory Monitor and Compliance Officer and LRT Regulation By-law No. 2015-[x]**

By-Law No. 2015 - XXX

A by-law of the City of Ottawa to establish the position and the duties of the Light Rail Regulatory Monitor and Compliance Officer and to provide for other regulatory matters for municipal light rail systems under the jurisdiction of the City of Ottawa.

WHEREAS the City is undertaking the design, construction, maintenance, and operation of a light rail transit system known as the Confederation Line, including the regulatory oversight of related safety and security matters;

AND WHEREAS the planned Confederation Line is a “*railway*” within the meaning of the federal *Canada Transportation Act*, S.C. 1996 c. 10, as amended;

AND WHEREAS Section 158 of the *Canada Transportation Act* provides the Federal Minister of Transport with the authority to enter into an agreement with a provincial authority to authorize the provincial authority to regulate the design, construction, operation, safety and security of a railway as well as the rates and conditions of service in the same manner and to the same extent as it may regulate a railway within its jurisdiction;

AND WHEREAS-pursuant to Section 12.17 of the *City of Ottawa Act*, 1999, S.O. 1999, c. 14, Sched. E and pursuant to the *Municipal Act, 2001*, S.O. 2001, c. 25, the City has authority to operate and maintain passenger transportation systems;

AND WHEREAS the Federal Minister of Transport and the City of Ottawa, a municipality established by the Province of Ontario pursuant to the *City of Ottawa Act*, 1999, entered into an agreement to confirm that the City is authorized to regulate the design, construction, operation, safety and security of, as well as the rates and conditions of service of, any Ottawa light rail transit system in the same manner and to the same extent as the City may regulate a railway within its jurisdiction;

AND WHEREAS the City may regulate the Confederation Line and other light rail transit systems by way of by-laws, guidelines, policies, regulations, rules, standards, safety and security management systems and by similar means or practices;

AND WHEREAS Council of the City deems it in the public interest to regulate the Confederation Line and other light rail transit systems by various forms or means of regulation;

THEREFORE the Council of the City of Ottawa enacts as follows:

DEFINITIONS

1. In this by-law:

“Canada Transportation Act” means *Canada Transportation Act*, S.C. 1996 c. 10, as amended, and includes any regulations passed thereunder, and may also be referred to as “CTA” for the purposes of this by-law;

“Capital Railway” (or **“Trillium Line”**) means the railway owned and operated by the City, for which the City of Ottawa has been issued a Certificate of Fitness under the *Canada Transportation Act*;

“City Manager” means the City Manager of the City, or authorized representative;

“City of Ottawa” means the municipality known as the City of Ottawa as established under the *City of Ottawa Act, 1999*, S.O. 1999, c.14, Sched. E, as amended, and may also be referred to as “the City”;

“Confederation Line” means the existing or future municipal light rail system and right-of-way between the Tunney’s Pasture and Blair Rapid Transit Stations, or other inter-connected locations, as approved by Council;

“Director, Rail Implementation” means the Director, Rail Implementation, in the Rail Implementation Office of the City, or authorized representative;

“General Manager, Transit Services” means the General Manager of Transit Services of the City, or authorized representative;

“Light Rail Regulatory Monitor and Compliance Officer” means the individual appointed as Light Rail Regulatory Monitor and Compliance officer by the City for the purposes of the Confederation Line and other LRT Railways, and may also be referred to as “Compliance Officer”;

“LRT Railway” means any municipal light rail transit system designed, constructed, operated, or maintained by, or on behalf of, the City, including any expansions or modifications made thereto, and located generally within the City

and between any point in the City and any point outside the City including any point outside Ontario; and, for greater certainty for the purposes of this by-law, LRT Railway includes the Confederation Line but does not include the Capital Railway;

“LRT Regulations” means the by-laws, guidelines, policies, regulations, rules, standards, safety management systems and security management systems, contracts and agreements (including the Project Agreement), or similar, or portions thereof, adopted by the City from time to time and designated or confirmed by the City Manager as being in the nature of, or having as a purpose, the regulation of the design, construction, operation, maintenance, or the safety and security of, as well as the rates and conditions of service of, LRT Railways;

“Minister” means the Federal Minister of Transport;

“Project Agreement” means the Project Agreement dated February 12, 2013 made between the City and Rideau Transit Group relating to the design, construction, financing, and maintenance of the Confederation Line;

“Rail Implementation Office” means the Rail Implementation Office of the City, and may also be referred to as “RIO”; and,

“Transit Services Department” means the Transit Services Department of the City.

ADOPTION OF LRT REGULATIONS

2. (1) Through the terms of the Project Agreement, the City shall continue to regulate certain aspects of the Confederation Line by way of certain designated contractual commitments and requirements and for so long as these particular commitments or requirements remain in force and effect under the Project Agreement.
- (2) The City may supplement the LRT Regulations for the Confederation Line adopted through the terms of the Project Agreement with other forms or means of the LRT Regulations, other than by-laws, that may be adopted from time to time by the City Manager, the Director, Rail Implementation, the General Manager of Transit Services, or others as may be further authorized by Council.

- (3) The City may adopt LRT Regulations that may apply to LRT Railways other than the Confederation Line through various forms and means of LRT Regulations as the City may determine appropriate at the time, having regard to the scope and nature of the LRT Railway, the activity or condition to be regulated and other relevant circumstances and factors.
- (4) All LRT Regulations adopted by the City through various forms and means shall specify to whom they apply, including any or all of City employees, contractors, suppliers, agents, representatives, passengers, or the general public.
- (5) Any LRT Regulation adopted by means other than by-law may be repealed, terminated, rescinded, resolved, modified, supplemented or otherwise amended by the City Manager as may be required and deemed appropriate for the proper regulation, administration, management, security and safety of the LRT Railways, subject to Council direction.

ESTABLISHMENT OF POSITION AND APPOINTMENT OF LIGHT RAIL REGULATORY MONITOR AND COMPLIANCE OFFICER

3. (1) The position of Compliance Officer of the City for the purposes of LRT Railways is hereby established.
- (2) Council shall appoint a person to the position of Compliance Officer of the City for the purposes of LRT Railways for a term of five years, with any renewal thereof to be determined by Council.
- (3) The Compliance Officer is independent of the Transit Services Department and of the Rail Implementation Office.
- (4) Only Council may revoke the appointment of the Compliance Officer.

DUTIES AND RESPONSIBILITIES OF LIGHT RAIL REGULATORY MONITOR AND COMPLIANCE OFFICER

4. (1) In accordance with the provisions of this by-law and as may be directed by Council, the Compliance Officer shall review, investigate, and monitor compliance with the LRT Regulations by those persons or entities to whom the LRT Regulations apply.
- (2) The Compliance Officer shall establish such protocols and procedures that are necessary to conduct his or her duties under this by-law.

- (3) Without limiting or compromising the independent nature of the position as set out in subsection 3(3), the Compliance Officer shall report to and be under the general supervision of the City Manager and shall meet on a quarterly basis with the City Manager to review compliance with the LRT Regulations.
- (4) The Compliance Officer shall not have any power or authority to administer or enforce the Project Agreement (or related ancillary agreements) on behalf of the City. This power and authority shall be exercised by the City Representative and his or her authorized designees as permitted, and for such activities and time periods as are specified, by the Project Agreement.

DUTY TO FURNISH INFORMATION AND ACCESS TO INFORMATION

5. (1) Subject to and within the limits of applicable legislation, the Project Agreement or any other applicable contracts and agreements, the City shall provide the Compliance Officer with such information regarding LRT Railways and related City services, departments, operations, staff, or matter, as the Compliance Officer believes to be necessary, relevant, and essential to conduct his or her duties under this by-law.
- (2) Subject to and within the limits of applicable legislation, the Project Agreement or any other applicable contracts and agreements, the Compliance Officer shall have access to all books, records, property, or other information or material in the possession or control of the City, or that the City has contractual rights of access to, that the Compliance Officer believes to be necessary, relevant, and essential to perform his or her duties under this by-law.
- (3) The Compliance Officer shall only use the foregoing books, records, property and other information and material for the sole purpose of performing his or her duties and responsibilities as set out in this by-law.

DUTY OF CONFIDENTIALITY

6. The Compliance Officer, and any person acting under his direction, shall keep confidential and preserve the secrecy of all information and matters that come into his or her knowledge in the course of the Compliance Officer's duties under

this by-law, except as may be required to conduct his or her duties under this by-law, including reporting to Council, and as may otherwise be required by law.

WORK PLAN

7. On a date to be determined by Council, the Compliance Officer shall provide to Council for approval a recommended multi-year work plan setting out the subject matter of the Annual Compliance Reports to be submitted in the following and subsequent years.

REPORTING

8.
 - (1) The Compliance Officer shall produce an Annual Compliance Report regarding compliance with LRT Regulations.
 - (2) On a date to be determined by Council, the Compliance Officer shall provide written notice to Council for information of the tabling of the Annual Compliance Report with Transit Commission on a specified date.
 - (3) No less than 30 days prior to provision of notice to Council under Subsection (1), the Compliance Officer shall provide the City Manager with a draft copy of the Annual Compliance Report, and the City Manager shall prepare a management response to the Annual Compliance Report.
 - (4) The Annual Compliance Report together with the management response shall be considered by Transit Commission at the date specified in the notice provided under subsection (1), for final information or approval of Council at a subsequent date.
 - (5) The form and required content of the Annual Compliance Report to be provided by the Compliance Officer pursuant to subsection (1) shall be as set out in the work plan approved by Council as provided in Section 7.
 - (6) Council may require the Compliance Officer to report on a more frequent or other basis.
 - (7) Council may direct the City Manager or other official or employee of the City to take action in respect of any information or finding of the Compliance Officer in the Annual Compliance Report or other report.

CITY MANAGER

- 9. The City Manager is responsible for ensuring compliance with the LRT Regulations.

ACCIDENT INVESTIGATIONS

- 10. (1) The City Manager is authorized to undertake accident investigations in relation to an LRT Railway and to enter into services or support contracts with external parties or agencies as deemed necessary by the City Manager to provide accident investigation services to the City.
- (2) The exercise of authority by the City Manager pursuant to Subsection (1) shall be reported to Council as soon as practicable.
- (3) The General Manager, Transit Services, the Director, Rail Implementation, and any other person or entity directed by the City Manager shall adopt and implement accident investigation, assessment, and reporting policies, procedures and guidelines that are to be applied and followed in respect of potential accidents that may occur in relation to the operation and maintenance of an LRT Railway.

SHORT TITLE

- 11. This by-law may be referred to as the “Light Rail Regulatory Monitor and Compliance Officer and LRT Regulation By-law”.

EFFECTIVE DATE

- 12. Sections 1, 2, 3, 9, 10 and 11 of this by-law shall come into force and effect upon enactment.
- 13. Sections 4, 5, 6, 7 and 8 of this by-law shall come into force and effect on the date Council appoints the Compliance Officer.

ENACTED AND PASSED this day of 2015.

CITY CLERK

MAYOR