

## SCHEDULE 25

### RECORD PROVISIONS

#### 1. General Requirements

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 25, as follows:
- (a) in accordance with this Section 1;
  - (b) in accordance with the Project Agreement;
  - (c) in accordance with the requirements of Good Industry Practice;
  - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
  - (e) in accordance with the most stringent of Project Co's and the Construction Contractor's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in electronic format in accordance with the City's designated record keeping system;
  - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 35 of the Project Agreement; and
  - (j) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records on the Site in addition to retaining and maintaining records referred to in Section 2.1 in electronic format on the City's designated record keeping system.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the as-built drawings and the Record Drawings) required to be made or supplied pursuant to the Project Agreement on the most updated version of the applicable software and editable in updated base software format, and when printed, be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to the City, and shall conform to the Output Specifications, Good Industry Practice, and the CAD Standards. All drawings are to be submitted via the City's electronic control management system, with one hard copy provided to the City. Project Co shall make or supply drawings and other documents in such

- form as has been agreed by the Parties and shall include secure back up facilities. The City shall provide Project Co access to the City's electronic control management system.
- 1.5 Records shall be stored in electronic format within the City's electronic control management system where Project Co shall have access thereto and will continue to have access thereto, such that City will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 25 for a minimum period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall shall notify City if Project Co wishes to destroy any records referred to in this Schedule 25, or in respect of which the required period Section 1.6 or under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, City may elect to require Project Co to deliver such records to City, in which case Project Co shall, at the expense of City, deliver such records (with the exception of Sensitive Information) to City in the manner and to the location as City shall specify; or
  - (b) if City fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of a termination of this Project Agreement in accordance with its terms, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 25 to City in the manner and to the location that City shall reasonably specify. City shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co; or
  - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement.
- 1.9 Where the termination of the Project Agreement arises:
- (a) as a result of a City Event of Default or pursuant to Section 43.3 of the Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by City; or
  - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Final Completion Date or the Termination Date, as applicable (unless a longer period is required by Applicable Law), shall be borne by Project Co.
- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to City a report, as reasonably requested by City in connection with City's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against City or that may be owing by City to Project Co. The Parties acknowledge and agree that the contents

of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.

- 1.11 Not later than 120 days after the end of each fiscal year of the Project Term, a copy of Project Co's annual audited financial statements, in respect of that period, prepared in accordance with Applicable Law and GAAP, together with a certificate of the auditors of Project Co setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary or advisable and confirming that in their opinion such statements present fairly the financial position of Project Co and the results of its operations for the fiscal year reported on and have been defined in accordance with GAAP (as defined in the Lending Agreements), all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 50 of the Project Agreement, shall be treated by the City as Confidential Information of Project Co.

## **2. Records To Be Kept**

- 2.1 Without limiting any other requirement of the Project Agreement, and in addition to any other manuals, data, information and documents required to be maintained pursuant to Article 1.8 of Appendix A to Schedule 15-3 – Output Specifications: Maintenance and Rehabilitation Requirements, Project Co shall prepare, retain and maintain at its own expense:
- (a) the Project Agreement and the Project Documents, including all amendments to such agreements;
  - (b) all records relating to the appointment and replacement of the City Representative and the Project Co Representative;
  - (c) any documents, drawings (including, without limitation, the As-Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
  - (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
  - (e) all records relating to any statutory inspections of the Works or the Site, including any roadways;
  - (f) a complete record of construction, including:
    - (i) Construction Access Management Plan and all sub-plans;
    - (ii) Traffic Management Plans and all sub-plans;
    - (iii) all records generated by the Geotechnical Instrumentation and Monitoring Plan (as described in Schedule 15 – Output Specifications), including (but not limited to) baseline readings, routine monitoring records, and tunnel construction monitoring records;

- (iv) records of all pre-construction inspections and post-construction inspections (as described in Schedule 15 – Output Specifications), including a log identifying corrective actions;
  - (v) records of all geotechnical and environmental investigations performed by Project Co (as described in Schedule 15 – Output Specifications), including (but not limited to) records pertaining to the decommissioning of any monitoring wells and the location of any well casings;
  - (vi) Works progress photography;
  - (vii) construction notices or other communications with adjacent businesses, property owners or tenants;
  - (viii) planned and unplanned interruptions of Utility Infrastructure;
  - (ix) a complaints log including responses and any corrective action;
  - (x) any other items as requested by the City from time to time; and
  - (xi) piling inspection and testing results for structural construction.
- (g) any notices, reports, results and certificates relating to Substantial Completion and Final Completion and completion of the Project Co Commissioning;
- (h) all operation and maintenance manuals;
- (i) any documents relating to events of Force Majeure, Delay Events, Compensation Events, and Relief Events;
- (j) all documents submitted in accordance with Schedule 21 - Variation Procedure;
- (k) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (l) any documents related to a Project Co Change in Ownership or Change in Control;
- (m) any documents relating to any Refinancing;
- (n) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
- (i) Project Co's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
  - (iii) the withholdings of any payments by Project Co; or
  - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;

- (o) the financial accounts of Project Co referred to in Section 1.11 above;
  - (p) [not used];
  - (q) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Works;
  - (r) any documents relating to insurance and insurance claims;
  - (s) all Jointly Developed Materials; and
  - (t) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.