



The Municipal Corporation of the Town of Fort Erie

By-law No. 144-2022

Being a By-law to Authorize Entry into a Municipal Transfer Agreement between Niagara Transit Commission and The Corporation of the Town of Fort Erie

Whereas Council for The Regional Municipality of Niagara (the “Region”) enacted By-law No. 2017-21 on March 23, 2017 transferring responsibility by triple majority to provide inter-municipal transit within the geographical region of Niagara to the Region with the unanimous support of all local municipalities; and

Whereas on November 25, 2021 the Council of the Region considered and approved the report of the Chief Administrative Officer PW 55-2021 titled “Moving Transit Forward in Niagara: Creation of a Consolidated Transit Commission” approving the creation of a consolidated transit system to begin operations on January 1, 2023 and to be formed on the basis of the principles set out in the report and endorsed by Council of the Region; and

Whereas in accordance with the triple majority requirements of section 189 of the *Municipal Act, 2001*, the Region Council Resolution, By-law No. 2021-96 enacted by the Region on November 25, 2021, and the comprehensive Report No. PW 55-2021 was circulated for approval following that meeting and by January 31, 2022 the last of the twelve local municipalities voted in favour of the transit consolidation and uploading of authority to operate public transit to the Region; and

Whereas Fort Erie has transferred its respective authority to operate transit to the Region and the Region has established the Transit Commission for the purpose of operating a consolidated transit system within and between all municipalities in the Region and now intends to transfer all or substantially all of the assets used by Fort Erie in the conduct of the business; and

Whereas on December 6, 2021 the Municipal Council of the Town of Fort Erie received and considered Report No. [CAO-26-2021](#), and consented to the passage of Regional By-law No. 96-2021;

Whereas it is deemed desirable to enter into a Municipal Transfer Agreement with the Niagara Transit Commission;

Now therefore the Municipal Council of The Corporation of the Town of Fort Erie enacts as follows:

1. **That** the entry into a Municipal Transfer Agreement with the Niagara Transit Commission, is authorized and approved.
2. **That** the Mayor and Clerk are authorized and directed to execute the said Agreement, substantially in the form attached hereto as Schedule “A” and any supplemental documentation in a form satisfactory to the Director, Infrastructure Services, and the Town Solicitor, and to affix the corporate seal thereto.

3. **That** the Clerk of the Town is authorized to effect any minor modifications, corrections or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature to this by-law or its schedules after the passage of this by-law.

Read a first, second and third time and finally passed this 21st day of November, 2022.

Mayor

Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie certifies the foregoing to be a true copy of By-law No. 144-2022 of the said Town. Given under my hand and the seal of the said Corporation, this day of , 22.

Schedule 'A' to By-law No. 144-2022

Municipal Transfer Agreement

dated as of

_____, 20__

Between

Niagara Transit Commission

- and -

Corporation of the Town of Fort Erie

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND CONSTRUCTION	1
ARTICLE II THE SALE AND PURCHASE	6
ARTICLE III IN-FLIGHT PROJECTS	9
Article IV REPRESENTATIONS AND WARRANTIES OF Fort Erie.....	10
ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE TRANSIT COMMISSION.....	14
ARTICLE VI ADDITIONAL AGREEMENTS.....	15
ARTICLE VII COVENANTS	15
ARTICLE VIII CONDITIONS TO CLOSING.....	19
ARTICLE IX INDEMNIFICATION	21
ARTICLE X DISPUTE RESOLUTION AND VENUE	24
ARTICLE XI MISCELLANEOUS	26

MUNICIPAL TRANSFER AGREEMENT

THIS MUNICIPAL TRANSFER AGREEMENT is made as of the ___ day of _____, 2022, by and among the Corporation of the Town of Fort Erie ("Fort Erie") and Niagara Region Transit Commission a municipal services board established under section 196 of the *Municipal Act, 2001* (the "Transit Commission").

WHEREAS Council for the Regional Municipality of Niagara (the "Region") enacted By-Law No. 2017-21 on March 23, 2017 transferring responsibility by triple majority to provide inter-municipal transit within the geographical region of Niagara to the Region with the unanimous support of all local municipalities;

AND WHEREAS in February, 2017 multiple municipalities in the Region signed a Memorandum of Understanding (MOU) with the Region acknowledging that all municipalities have agreed to the consolidation of both municipal and intra-municipal transit within the Region;

AND WHEREAS Dillon Consulting was retained to prepare a report on the goals shared by all of building a connected transit network across the Region, and that report entitled the *Niagara Transit Services Delivery and Governance Strategy* report (Dillon Report) was completed in 2017;

AND WHEREAS the MOU established the Linking Niagara Transit Committee to develop a consolidated transit model and that Committee was made up of members appointed by the Region and the those regions who had signed the MOU and that Committee endorsed a proposed governance model for the consolidation of transit at its meeting on September 29, 2021;

AND WHEREAS on November 25, 2021 the Council of the Region considered and approved the report of the Chief Administrative Officer PW 55-2021 titled Moving Transit Forward in Niagara: Creation of a Consolidated Transit Commission approving the creation of a consolidated transit system to begin operations on January 1, 2023 and to be formed on the basis of the principles set out in the report and endorsed by Council of the Region;

AND WHEREAS in accordance with the triple majority requirements of section 189 of the *Municipal Act, 2001*, the Region Council Resolution, By-law No. 2021-96 enacted by the Region on November 25, 2021, and the comprehensive report PW 55-2021 was circulated for the approval following that meeting and by January 31, 2022 the last of the twelve local municipalities voted in favour of the transit consolidation and uploading of authority to operate public transit to the Region;

AND WHEREAS the CAO Governance Steering Committee endorsed a series of principles which form the basis for this Agreement, as attached as Appendix A hereto;

AND WHEREAS Fort Erie has transferred its respective authority to operate transit to the Region and the Region has established the Transit Commission for the purpose of operating a consolidated transit system within and between all municipalities in the Region and now intend to transfer all or substantially all of the assets used by Fort Erie in the conduct of the Business, on the terms and conditions hereinafter set forth;

NOW THEREFORE in consideration of the covenants and agreements contained herein, each of the parties hereto, each intending to be legally bound hereby, agree as set forth below.

ARTICLE I DEFINITIONS AND CONSTRUCTION

- 1.1 As used in this Agreement, the following terms have the meanings specified in this Section 1.1:
- "Actions or Proceedings" means (a) any claim, action, suit, grievance or judicial or administrative proceeding by or before a Governmental Authority, or (b) any arbitration.
- "Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such Person.
- "Agreement" means this Municipal Transfer Agreement, inclusive of Schedules, as it may be amended from time to time.
- "Assumed Contracts" has the meaning given to that term in Section 2.1(e).

“Assumed Indebtedness” has the meaning given to that term in Section 2.3.

“Assumed Liabilities” has the meaning given to that term in Section 2.3.

“ATU” has the meaning given to that term in Section 7.4(c).

“Books and Records” means books and records of Fort Erie related to its Business, including financial, operational, sales and purchase records, lists of suppliers and customers, business reports, plans and projections and all other documents, surveys, plans, files, records, assessments, correspondence and other data and information related to the Business, including all data, information and databases stored on computer-related or other electronic media, and such media itself, which shall for greater certainty include all safety standards certificates and records relating to the condition of any buildings related to the Business.

“Building” means any structure located on lands that are leased to the Transit Commission by Fort Erie with a primary purpose of assisting with the carrying on of the Business.

“Business” means, in respect of Fort Erie, the assets of and operations carried out by Fort Erie in relation to providing passenger transit service, including any maintenance, repair and support operations.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in Ontario are authorized or required by law to close.

“Closing” means the closing of the transactions contemplated hereby.

“Closing Date” means January 1, 2023.

“Closing Deliveries” means the documents described in Section 8.4 and Section 8.5 to be delivered by or on behalf of Fort Erie and the Transit Commission, respectively.

“Contract” means any agreement, contract, commitment, lease, licence or other legally binding arrangement, whether written or oral, to which each of Fort Erie or the Transit Commission, as the context may require, is a party or by which it is bound.

“Contract Rights” has the meaning given to that term in Section 7.1.

“Employees” means any employees, as applicable, of Fort Erie that are engaged in or connected with the Business.

“Employee Benefit Plans” means any incentive compensation or commission, profit sharing, pension, retirement (including retiree medical or life insurance) or supplemental retirement, deferred compensation, medical, life, disability, accident, sick pay or sick leave, Employee loan program, supplemental unemployment layoff or other benefit plan, program or policy (whether or not insured, or whether written or oral) for the benefit of Employees of Fort Erie, that has been established, maintained, sponsored or contributed to (or to which a contribution obligation exists or existed) by or on the part of Fort Erie or as to which Fort Erie has any liability (whether actual or contingent) for the benefit of any Employees of Fort Erie. The term “Employee Benefit Plan” does not include any statutory plan with which Fort Erie is required to comply, including the Canada Pension Plan, Quebec Pension Plan or any plan administered under applicable provincial health tax, workers’ compensation, workers’ safety and insurance and employment insurance legislation.

“Encumbrance” means any mortgage, deed of trust, pledge, security interest, easement, lien, charge, option, hypothecation, restriction on transfer, conditional sale or other title retention agreement, defect in title or other restriction of a similar kind.

“ETA” means the Excise Tax Act (Canada) and the regulations thereunder, as amended from time to time.

“Excluded Assets” has the meaning given to that term in Section 2.2.

“Fort Erie” has the meaning given to that term in the introductory recital of this Agreement.

“Governing Documents” means, with respect to any Person that is not a natural person, the certificate or articles of incorporation, memorandum and articles of association, by-laws, or other charter documents or organizational or governing documents of such Person.

“Governmental Authority” means any court, tribunal or government (federal, provincial, local or foreign) or any political subdivision thereof in Canada, including any ministry, department, commission, board, bureau, agency or other regulatory, administrative or governmental authority or instrumentality thereof including Fort Erie when acting in their regulatory capacity.

“GST/HST” means any taxes imposed pursuant to Part IX of the ETA;

“Indebtedness” means any obligation of Fort Erie: (a) for borrowed money, (b) evidenced by a note, bond, debenture or similar instrument, (c) under letters of credit, banker’s acceptances or similar credit transactions, (d) for any obligation properly classified as indebtedness or debt under PSAS (excluding unsecured trade payables), (e) in respect of any indebtedness or obligation of any other Person, whether as a guarantor, obligor or otherwise (other than the endorsement of negotiable instruments for deposit or collection in the ordinary course of business), (f) for any indebtedness or other obligation which is secured by a mortgage, deed of trust or other Encumbrance on any real property, (g) for any interest on any of the foregoing or (h) for any premiums, prepayment or termination fees, expenses or breakage costs due upon prepayment of any of the foregoing.

“Indemnified Party” means a party seeking indemnification pursuant to Article IX.

“Indemnifying Party” means a party against whom indemnification is sought pursuant to Article IX.

“Intellectual Property” means all intellectual properties and intellectual property rights arising under the laws of any jurisdiction of any kind or nature with respect to the following: (a) trade names, trademarks and service marks (registered and unregistered), domain names, brand names, trade dress, any other indicia of origin or good will, and similar rights, and all goodwill associated therewith (collectively, “Trademarks”), (b) patents, inventions, discoveries, and rights in respect of utility models or industrial designs, whether patentable or not (collectively, “Patents”), (c) copyrights and copyrightable works, including computer software and Internet web sites and all moral rights thereto (collectively, “Copyrights”), (d) know-how, inventions, discoveries, methods, processes, technical data, specifications, research and development information, data bases, technology, data, and all other confidential or proprietary information, and customer lists, in each case that derives economic value from not being generally known to other Persons who can obtain economic value from its disclosure, but excluding any registered Copyrights or issued Patents that cover or protect any of the foregoing and (e) all registrations and applications for any of the foregoing, and all reissues, re-examinations, provisionals, divisions, continuations, continuations-in-part, supplemental protections, renewals, extensions, restorations and reversions thereof.

“Interim Period” means the period from July 1, 2022 until the earlier of the Time of Closing.

“In-flight Projects” has the meaning given to that term in Section 2.2(e).

“Knowledge” and variations of it when used with respect to Fort Erie shall refer to all facts or matters actually known by the Leadership Team as of the date of this Agreement (or, with respect to a certificate delivered pursuant to this Agreement, as of the date of delivery of such certificate) without any implication of verification or investigation concerning such knowledge.

“Leadership Team” means the following senior executive management of Fort Erie: Chief Administrative Officer, Chief Financial Officer or Treasurer, Director of Legal Services or City Solicitor, Human Resources Director and General Manager of Transit, or such other individuals as Fort Erie advises in writing.

“Lease” has the meaning given to that term in Section 4.6(a).

“Leased Real Property” has the meaning given to that term in Section 4.6(a).

“Legal Requirement” means any federal, provincial, local or foreign constitution, law, ordinance, code, regulation, rule, statute or treaty.

“Licences” means all licences, order, waiver, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted or issued by any applicable Governmental Authority.

“Losses” means any and all liabilities, losses, damages, obligations, claims, demands, fines, fees, penalties, deficiencies and costs and expenses (including reasonable lawyers’ fees and expenses) resulting from a Third Party Proceeding.

“Material Adverse Effect” means any change, effect, circumstance, occurrence or state of facts (“Effects”) that has had or would reasonably be expected to have a material adverse effect on the results of operations or financial condition of the Business; provided that the Effects arising from the following shall not be taken into account in determining whether a “Material Adverse Effect” has occurred or would reasonably be expected to occur: (a) changes relating to applicable political, economic, business or regulatory conditions or events or in the global or national financial or capital markets; (b) conditions affecting the industry in which the Business operates; (c) the announcement or pendency of any transaction contemplated by this Agreement; (d) compliance by Fort Erie with the terms of, or the taking of any action required, contemplated or permitted by, this Agreement or otherwise at the request of the Transit Commission; (e) changes caused by a material worsening of current conditions caused by acts of terrorism or war (whether or not declared) or natural disaster; (f) changes in applicable law or PSAS; (g) any failure by Fort Erie to meet any internal or external forecasts or projections for any period; or (h) the deteriorating or deteriorated state, condition or usability of any Transferred Asset after the date of this Agreement;

“Material Contract” has the meaning given to that term in Section 4.15.

“Non-Assigned Contract” has the meaning given to that term in Section 7.1.

“Order” means any writ, judgment, decree, injunction, settlement or similar order of or approved by any Governmental Authority (in each case whether preliminary or final).

“Pending Assets” has the meaning given to that term in Section 2.2(d).

“Permitted Encumbrances” means: (a) Encumbrances for taxes and other governmental charges and assessments that are not yet due and payable; (b) Encumbrances of landlords and liens of carriers, warehousemen, mechanics, materialmen and repairmen and other similar liens arising in the ordinary course of business for sums not yet due and payable; (c) other Encumbrances or imperfections of title with respect to, property that are not material both in amount and substance and do not materially detract from the value or materially impair the existing use of the property affected by such lien or imperfection; and (d) Encumbrances securing Assumed Indebtedness.

“Person” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, not-for-profit, educational institutional, charitable institution, other business organization, trust, union, association or Governmental Authority.

“PSAS” means generally accepted public sector accounting standards under the CPA Canada Public Sector Accounting Handbook and the Public Sector Accounting Board guidelines, as in effect at the date of this Agreement.

“Purchase Price” means \$2.00 payable to Fort Erie.

“Registration Documents” has the meaning given to that term in Section 8.4(b).

“Retained Liabilities” has the meaning given to that term in Section 2.4.

“Time of Closing” means 12:01 am (Eastern time) on the Closing Date.

“Third Party Proceeding” has the meaning given to that term in Section 9.5(a).

“Transferred Assets” has the meaning given to that term in Section 2.1.

“Transferred Employees” means any non-union Employee who accepts offer of employment with the Transit Commission or union Employee who becomes employed by the Transit Commission in connection with this Agreement.

“Transit Commission” has the meaning given to that term in the introductory recital of this Agreement.

“Transit Commission Indemnified Party” has the meaning given to that term in Section 9.2.

“Vacation Amount” has the meaning given that to term in Section 7.6.

1.2 Construction. This Agreement shall be interpreted as follows:

- (a) *Headings*. Headings as to the contents of particular Articles and Sections are for convenience only and are in no way to be construed as part of this Agreement.
- (b) *Days*. Any reference to “days” means calendar days unless Business Days are expressly specified.
- (c) *Holidays*. If any act is required by the terms of this Agreement to be performed on a day that is not a Business Day, the act will be valid if performed on the next succeeding Business Day.
- (d) *Currency*. Any reference to “\$” means Canadian dollars and unless expressly specified, all references to currencies are to Canadian dollars.
- (e) *Accounting Terms*. Any accounting term not otherwise defined herein has the meaning ascribed to it in accordance with PSAS.
- (f) *Trade Terms*. Unless otherwise defined in this Agreement, words or abbreviations which have well known trade meanings are used in this Agreement with those meanings.
- (g) *References to this Agreement*. Unless otherwise specified, any reference in this Agreement to this Agreement or any other agreement or document, is a reference to this Agreement or the other agreement or document as it may have been, or may from time to time be, amended, supplemented, restated, novated or replaced.
- (h) *References to Statutes*. Unless otherwise specified, any reference in this Agreement to a statute includes all rules and regulations made under it, in each case as it or they may have been, or may from time to time be, amended, re-enacted, consolidated or replaced.
- (i) *Other Rules of Construction*. Unless the context otherwise requires, as used in this Agreement: (i) “or” is not exclusive; (ii) “including” and its variants mean “including, without limitation” and its variants; (iii) words of any gender include each other gender; (iv) words defined in the singular have the parallel meaning in the plural and vice versa; (v) references to “written” or “in writing” include in electronic form; (vi) the terms “hereof,” “herein,” “hereby,” “hereto,” and derivative or similar words refer to this entire Agreement, including the Exhibits and Schedules hereto; and (vii) all recitals, Sections, Articles and Exhibits, Schedules referred to herein are, respectively, recitals, Sections and Articles of, and Exhibits and Schedules to, this Agreement.

1.3 Exhibits and Schedules. The following Exhibits and Schedules to this Agreement are incorporated by reference herein and are an integral part of this Agreement:

Appendix A – Summary Term Sheet

SCHEDULES

Schedule 2.1(b) **Vehicles, Buildings, Machinery, Equipment and Furniture**

Schedule 2.1(c) **Prepaid Expenses**

Schedule 2.1(d) **Inventory**

<u>Schedule 2.1(f)</u>	<u>Licences</u>
<u>Schedule 2.1(h)</u>	<u>Reserves</u>
<u>Schedule 2.2(d)</u>	<u>Pending Assets</u>
<u>Schedule 2.2(e)</u>	<u>In-flight Projects</u>
<u>Schedule 2.2(m)</u>	<u>Excluded Assets</u>
<u>Schedule 2.3(d)</u>	<u>Assumed Indebtedness</u>
<u>Schedule 2.3(e)</u>	<u>Benefits</u>
<u>Schedule 4.5(b)</u>	<u>Consents</u>
<u>Schedule 4.6(a)</u>	<u>Real Property Leases</u>
<u>Schedule 4.10</u>	<u>Actions or Proceedings</u>
<u>Schedule 4.12(a)</u>	<u>Intellectual Property</u>
<u>Schedule 4.13</u>	<u>Employees</u>
<u>Schedule 4.13(d)</u>	<u>Formula for Shared Liability Arising from Amalgamation Regarding Non-Union Employees</u>
<u>Schedule 4.14</u>	<u>Benefits Plans</u>
<u>Schedule 4.15</u>	<u>Material Contracts</u>

ARTICLE II THE SALE AND PURCHASE

- 2.1 Transfer of Assets. Subject to the terms and conditions of this Agreement, at the Closing, Fort Erie shall sell, assign, transfer and deliver to the Transit Commission (or in the case of the Buildings, the Region), and the Transit Commission (or in the case of the Buildings, the Region) shall purchase, accept and take delivery of, as a going concern with all related goodwill and for the Purchase Price, all of the property, rights and assets exclusively used or held for use in connection with or related to the Business (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situated (collectively, the "Transferred Assets"), including:
- (a) *Real Property*. All rights as lessee of real property used in the Business in which Fort Erie has a leasehold interest, including the Leased Real Property, together with all leasehold improvements relating thereto;
 - (b) *Vehicles, Buildings, Machinery, Equipment, and Furniture*. All vehicles, Buildings, machinery, equipment, fixtures, furniture, furnishings, parts or patterns and other fixed assets used or held for use in its Business, as described in Schedule 2.1(b);
 - (c) *Prepaid Expenses*. All prepaid expenses described in Schedule 2.1(c);
 - (d) *Inventory*. All Inventory used or held for use in the Business described in Schedule 2.1(d);

- (e) *Agreements*. All Contracts related to its Business (the “Assumed Contracts”), including the Material Contracts but excluding any Contract forming part of the Excluded Assets;
- (f) *Licences*. All transferable Licences obtained, maintained, held or used in connection with its Business, including those described in Schedule 2.1(f);
- (g) *Intellectual Property*. All Intellectual Property used or held for use by Fort Erie in the Business;
- (h) *Reserves*. The cash equivalent of all reserves and deferred revenue held by Fort Erie in connection with any amounts described in Schedule 2.1(h);
- (i) *Computer Hardware and Software and Information Systems*. All and computer hardware and software used in its Business, in each case including all rights under licences and other agreements or instruments relating thereto;
- (j) *Books and Records*. All Books and Records (other than those required by law to be retained by Fort Erie, copies of which will be made available to the Transit Commission);
- (k) *Express Consents under Privacy and Anti-Spam Law*. All express consents obtained by Fort Erie under applicable privacy and anti-spam laws from any Person;
- (l) *Goodwill*. All goodwill, together with the exclusive right for the Transit Commission to represent itself as carrying on its Business in succession to Fort Erie and the right to use any words indicating that the Business is so carried on, including the exclusive right to use the names and styles currently used by Fort Erie, or any variation thereof, as part of the name or style under which the Business or any part thereof is carried on by the Transit Commission;
- (m) *Warranties*. All third party warranties and guarantees with respect to assets used in its Business, to the extent the same are assignable or transferable by Fort Erie; and
- (n) *Rights*. All of Fort Erie’s rights, claims, credits, causes of action, choses in action, rights of set-off, rights to refunds, rights of recovery or other rights of recoupment against third parties relating to the Transferred Assets.

While the presence of an item in any Schedule created in connection with this Section 2.1 shall be conclusive evidence of its status as a Transferred Asset, the non-inclusion of any item shall not be conclusive evidence that it is not a Transferred Asset and the definition of Transferred Asset shall at all times remain subject to the general terms include in this Section 2.1.

2.2 Excluded Assets. The Transferred Assets shall not include any of the following property and assets of Fort Erie (collectively, the “Excluded Assets”):

- (a) all current assets of Fort Erie, except as otherwise provided herein, including all accounts receivable, trade accounts, notes receivable and all other amounts due to Fort Erie in relation to its Business as well as the security for such accounts and notes.;
- (b) all rights as owner of real property;
- (c) Contracts of employment with any non-union Employees of Fort Erie involved in the Business;
- (d) assets that would otherwise constitute Transferred Assets but form part of a capital improvement or acquisition project (other than as contemplated herein) that is not completed by the Closing Date and can be completed without any funding commitment on the part of the Transit Commission (the “Pending Assets”) and as set out in Schedule 2.2(d), which, for the avoidance of doubt, will be transferred at a later date in accordance with Section 2.6;
- (e) assets that would otherwise constitute Transferred Assets but form part of a capital improvement or acquisition project (other than as contemplated herein) that is not completed by the Closing Date and require a further funding commitment on the part of

the Transit Commission (the “In-flight Projects”) and as set out in Schedule 2.2(e), which, for the avoidance of doubt, will be transferred at a later date in accordance with Article III;

- (f) cash on hand, cash equivalents, bank deposits and marketable securities excluding the reserves or deferred revenue pursuant to Section 2.1(h) but including any reserves maintained in respect of obligations or liabilities of Fort Erie in connection with any Actions and Proceedings existing as of the Closing Date;
- (g) all bank accounts and related deposit and payment systems used in its Business;
- (h) insurance policies and the rights thereunder;
- (i) rights under the Employee Benefit Plans;
- (j) personnel records that Fort Erie is required by law to retain in its possession (copies of which will be made available to the Transit Commission);
- (k) Fort Erie’s rights under this Agreement;
- (l) any Contracts relating to Retained Liabilities including any loan or credit agreements or debt instruments, or any swap Contracts, hedge Contracts, derivatives Contracts and similar Contracts and instruments to which Fort Erie is a party;
- (m) any other assets, property and Contracts specifically identified in Schedule 2.2(m); and
- (n) Contracts, and Books and Records relating exclusively to the foregoing.

2.3 Assumption of Certain Liabilities by Transit Commission. Subject to the provisions of this Agreement, the Transit Commission agrees to assume, pay, satisfy, discharge, perform and fulfil, from and after the Time of Closing, only the following obligations and liabilities of Fort Erie (collectively, the “Assumed Liabilities”):

- (a) all obligations and liabilities of Fort Erie under the Assumed Contracts but only to the extent that such obligations or liabilities are required to be performed after the Closing and do not relate to any failure to perform, breach or default by Fort Erie on or before the Closing;
- (b) all obligations and liabilities of Fort Erie under the Licences but only to the extent that such obligations or liabilities are required to be performed after the Closing and do not relate to any failure to perform, breach or default by Fort Erie on or before the Closing;
- (c) all liabilities and obligations of Fort Erie in the form of a debenture that is securing or otherwise connected to any Transferred Asset;
- (d) all liabilities and obligations of Fort Erie with respect to the Indebtedness described in Schedule 2.3(d) (collectively the “Assumed Indebtedness”);
- (e) all liabilities and obligations of Fort Erie relating to employee benefits, compensation or other arrangements with respect to any Transferred Employee arising after the Closing as set out in Schedule 2.3(e);] and
- (f) all obligations and liabilities of Fort Erie relating to the Transferred Assets first incurred from or after the Time of Closing and not incurred from or related to any failure to perform, breach or default existing at or prior to the Time of Closing, or otherwise attributable to any period ending on or before the Closing.

2.4 Retained Liabilities. Notwithstanding anything to the contrary in Section 2.3, Assumed Liabilities shall exclude the following obligations and liabilities of Fort Erie:

- (a) all Indebtedness other than Assumed Indebtedness;
- (b) all current liabilities of Fort Erie, except as otherwise provided herein, including all book debts and other debts owing by Fort Erie and related to its Business as well as the benefit of all security for such debts;

- (c) all obligations and liabilities in respect of any fees, costs or expenses incurred by or on behalf of Fort Erie or any Affiliate of Fort Erie in connection with or arising from the negotiation, documentation and/or consummation of the transactions contemplated by this Agreement, including any fees or expenses of any financial, legal, accounting or other professional advisors;
- (d) all obligations and liabilities of Fort Erie in respect of severance or other costs in connection with any Employees that are not Assumed Liabilities, incurred on or prior to the Time of Closing;
- (e) all wages, salary, bonus and other compensation (excluding accrued amounts identified on Closing and forming part of the Assumed Liabilities) and all liabilities under Employee Benefit Plans relating to the employment of all Transferred Employees prior to the Closing Date;
- (f) all obligations and liabilities of Fort Erie in connection with any Actions and Proceedings arising as a result of facts or circumstances that occurred prior to the Closing Date, or otherwise attributable to any period ending on or before the Closing; and
- (g) all obligations and liabilities of Fort Erie related to the Excluded Assets.

All liabilities of Fort Erie, whether or not incurred in connection with the Business, that are not specifically listed as Assumed Liabilities in Sections 2.3(a) through (f) are to be retained by Fort Erie and are hereinafter referred to as "Retained Liabilities".

- 2.5 Development Charges. Notwithstanding the transfer of Reserves described in Section 2.1(h), at the Closing, Fort Erie shall, where applicable, transfer to the Region any development charges for transit held by Fort Erie as at December 31, 2022.
- 2.6 Pending Assets. Any Pending Assets shall be held in trust by Fort Erie for the benefit of the Transit Commission and shall be transferred to the Transit Commission.
- 2.7 Other Post-Closing Transfers. Any amounts received by the Transit Commission in respect of any of the Excluded Assets shall be held in trust by the Transit Commission for the benefit of Fort Erie and shall be promptly paid over or transferred, as applicable, to Fort Erie.
- 2.8 Payments-in-lieu. In the event that any payment-in-lieu of taxes is applicable to the Transferred Assets prior to the Closing, the Transit Commission shall continue to make payments to Fort Erie of amounts matching to the value of the payment-in-lieu of taxes on a timely basis after the Closing Date.
- 2.9 GST/HST. No GST/HST shall be payable with respect to the transfer of all the Transferred Assets under this Agreement as such transfer constitutes intra-municipal supplies for GST/HST purposes that is GST/HST exempt under Section 28, Part VI, Schedule V of the ETA.

ARTICLE III IN-FLIGHT PROJECTS

- 3.1 General Principles. In-flight Projects and all connected rights and obligations will be transferred to the Transit Commission after the Closing Date in whole or in part depending on:
 - (a) The operational capacity of the Transit Commission in relation to the In-flight Project;
 - (b) The human resources available to oversee the In-flight Project;
 - (c) The procurement status of the deliverables associated with such part In-flight Project;
 - (d) The confirmation of availability of operational funding after the In-flight Project becomes a Transferred Asset;
 - (e) The funding requirements of such part of the In-flight Project and any timing constraints related thereto;

- (f) The results of any facilities review undertaken by the Transit Commission in connection with the In-flight Project; and
- (g) The substantial completion of such part of the In-flight Project,

all as determined by the Transit Commission and Fort Erie acting reasonably and in good faith. Where In-flight Projects are subject to funding from revenue sources from a Governmental Authority, including but not limited to Investing in Canada Infrastructure Program, gas taxes, and development charges, such funding requirements may require consent from the applicable Governmental Authority to effect a transfer. The Transit Commission and Fort Erie will use its best efforts and cooperate reasonably with each other to obtain any requisite consents, and will cooperate reasonably with each other to ensure that (i) such funding is used to support and finance the applicable In-flight Projects and (ii) any applicable reimbursements owing from such Governmental Authority to Fort Erie for funds deployed by such Fort Erie in respect of such Pending Asset shall be paid to Fort Erie. The Transit Commission, in its reasonable discretion, reserves the right to reject the transfer of any of these In-flight Projects in the event that such approval cannot be obtained. Notwithstanding the foregoing, the Parties hereto have agreed to the initial classifications and treatments for each of the known In-flight Projects based on the preliminary findings of the applicable Parties set out in greater detail in this Article III.

3.2 Project Details. Schedule 3.2 sets out the details of each In-flight Project to which this Agreement applies. Schedule 3.2 shall include, for each In-flight Project:

- (a) Which party bears the invoicing responsibility for the In-flight Project;
- (b) Which party is responsible for completeness and accuracy of recording expenses and remitting payment for the In-flight Project.
- (c) Which party bears the ICIP and PGT responsibility for the In-flight Project, including the timing and details of the reporting responsibility, the timing for the payment to the Transit Commissions of any ICIP or PGT project funding surplus and the timing of for payment to Fort Erie for funds budgeted by Fort Erie but received by the Transit Commission;
- (d) The timing and expected details of all updates to the Transit Commission from Fort Erie for all other funding sources and budgets for the In-flight Project, including total funding sources budgeted, actual funding received, total expense budget and actual expenses incurred;
- (e) The timing and expected details of the transfer to the Transit Commission of any applicable purchase orders and transfer payment agreements from Fort Erie in connection with the In-flight Project;
- (f) The timing and expected details of the transfer to the Transit Commission and the responsibilities of any applicable Employees that are expected to work on the In-flight Project before its transfer to the Transit Commission;
- (g) The timing for the payment to the Transit Commission of any remaining balances associated with the In-flight Project;
- (h) The dates of all proposed partial and final transfers of the components (or the entirety) of the In-flight Projects; and
- (i) Any other pertinent information to the In-flight Project as may be requested by the Transit Commission in connection with the foregoing.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF FORT ERIE

Fort Erie hereby represents and warrants to the Transit Commission, solely as applicable to Fort Erie and in connection with its Business, as follows:

- 4.1 Authority of Fort Erie. Fort Erie has all necessary power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.
- 4.2 Authorization. The execution and delivery of this Agreement by Fort Erie and the performance by its obligations hereunder have been duly authorized by all necessary proceedings of Fort Erie pursuant to the *Municipal Act, 2001*.
- 4.3 Organization of Fort Erie. Fort Erie is duly organized and validly existing and has all necessary other power and authority to own, operate or lease its properties and carry on its business as now conducted. Fort Erie is in good standing in each jurisdiction in which the character of the properties owned, operated or leased by it or the nature of the activities conducted by it make such qualification and good standing necessary, except where the failure to be so qualified would not have a Material Adverse Effect.
- 4.4 Title to Property. Fort Erie is the sole beneficial (and where its interests are registered, the sole registered) owner, or in the case of leases of equipment, lessee, of all of the Transferred Assets comprising personal or movable property to be conveyed by it to the Transit Commission pursuant to this Agreement. Fort Erie has good and marketable title to all of such Transferred Assets, free and clear of all Encumbrances other than Permitted Encumbrances.
- 4.5 No Violation; Consents.
- (a) *No Violation.* The execution and delivery by Fort Erie of this Agreement, the consummation of the transactions contemplated hereby, and the compliance with or fulfillment of the terms, conditions or provisions hereof by Fort Erie:
- (i) does not conflict with or violate any provision of the Governing Documents of Fort Erie; and
- (ii) does not violate any Legal Requirement to which Fort Erie is subject or by which any asset of Fort Erie is bound or affected.
- (b) *Governmental Consents.* Except as set forth in Schedule 4.5(b), no consent, approval or authorization of, or registration or filing with, any Governmental Authority is required in connection with the execution or delivery by Fort Erie of this Agreement or the consummation by Fort Erie of the transactions contemplated by this Agreement.
- 4.6 Real Property Leases.
- (a) Schedule 4.6(a) sets forth: (i) the address of each real property currently leased or subleased to or by Fort Erie, as lessee or sub-lessee (the "Real Property"), and, (ii) a true and complete list of all leases and subleases, and all modifications and amendments of and agreements relating to such title, leases and subleases (such leases and subleases, as modified and amended, collectively, the "Leases" or individually a "Lease") for each such Real Property. Fort Erie has delivered or made available to the Transit Commission a true and complete copy of each such Lease. Except as described in Schedule 4.6(a), with respect to each of the Leases:
- (i) such Lease is legal, valid, binding, enforceable and in full force and effect as against Fort Erie;
- (ii) the transactions contemplated by this Agreement do not require the consent of any other party to such Lease, will not result in a breach of or default under such Lease by Fort Erie, and will not otherwise cause such Lease to cease to be legal, valid, binding, enforceable and in full force and effect as against Fort Erie on substantially the same terms following the Closing; and
- (iii) Fort Erie have not assigned any of its Leases or any interest in such Leases or sublet any portion of the premises leased to them under such Leases.
- (b) Where the Real Property is not subject to a Lease, Fort Erie holds good and marketable title such Real Property.

- 4.7 Condition of Fixed and Tangible Assets. Fort Erie has valid and subsisting leases with respect to any fixed or tangible assets leased by them, and Fort Erie is not, and with the passage of time or giving of notice will not be, in default or breach in any material respect under any such lease. The material fixed and tangible assets currently used by Fort Erie in the Business, taken as a whole, are in good operating condition (having regard to their age and current use to which they are being put), subject to ordinary wear and tear and to routine maintenance and repairs that would not (alone or in the aggregate) have a Material Adverse Effect.
- 4.8 Taxes. Fort Erie is exempt from the payment of any taxes on income pursuant to either:
- (a) section 149(1)(c) of the *Income Tax Act*; or
 - (b) section 149(1)(d.5) of the *Income Tax Act*.
- 4.9 GST/HST. Fort Erie is a municipality for GST/HST purposes as defined under paragraph (a) of the definition of "municipality" in subsection 123(1) of the ETA and is a regional municipality for the purposes of section 28, Part VI, Schedule V of the ETA;
- 4.10 Actions or Proceedings. Schedule 4.10 sets forth: (a) all Actions or Proceedings by or against Fort Erie in connection with its Business that as of the date of this Agreement are current or pending, and (b) all Actions or Proceedings that Fort Erie's Knowledge are threatened as of the date of this Agreement against Fort Erie in connection with its Business. There are no current, pending or threatened Actions or Proceedings by Fort Erie against any third party in connection with its Business.
- 4.11 Compliance With Laws.
- (a) Fort Erie is, and at all times in the two (2) years prior to the date of this Agreement, has been, in compliance in all material respects with each Legal Requirement that is or was applicable to it or to the conduct or operation of its Business or the ownership or use of any of its assets, except where the failure so to comply could not reasonably be expected to have a Material Adverse Effect;
 - (b) Fort Erie has not received, at any time in the two (2) years prior to the date of this Agreement, any written notice or other communication from any Governmental Authority or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement, except where the failure so to comply could not reasonably be expected to have a Material Adverse Effect; and
 - (c) There is no outstanding Order imposed on Fort Erie.
- 4.12 Intellectual Property.
- (a) Schedule 4.12(a) sets forth a true and complete list of all domain names, Patents, registered Trademarks and Trademark applications, and registered Copyrights and Copyright applications included in Fort Erie's Intellectual Property.
 - (b) Except as would not have a Material Adverse Effect, Fort Erie has good title and ownership of or has the rights to use pursuant to a valid written license, sublicense or other agreement, to: (i) Fort Erie's Intellectual Property and, (ii) and all data and information generated from, created by or collected in connection with a customer's or end user's use of Fort Erie's products or services, that are necessary to enable Fort Erie to carry on its Business as now conducted or presently proposed to be conducted.
- 4.13 Employee Matters.
- (a) Schedule 4.13(a) sets forth a list of the titles or positions, and job descriptions, of all of their Employees with their date of hire and the location of their employment, whether they are actively at work or not and, if not, the reason for the absence and expected return to work date, and a list of the salaries and other remuneration of each Employee (excluding each of the Employee Benefit Plans, which the parties agree are exclusively addressed in Section 4.14).

- (b) Fort Erie has complied, in all material respects, with all Legal Requirements and Orders applicable to it relating to employment of its Employees, including those relating to wages, hours of work, overtime and other employment standards, human rights, collective bargaining, occupational health and safety, workers' hazardous materials, pay equity and workers' compensation, except for such non-compliance that would not have a Material Adverse Effect.
- (c) As of the date of this Agreement there are no outstanding Actions or Proceedings, Orders or complaints by any Employee under any applicable employment standards, human rights, pay equity, occupational health and safety, workplace safety and insurance or any other applicable employment-related statute in connection with its Business, and as of the date of this Agreement, Fort Erie has no Knowledge that any such Actions or Proceedings or complaints may be filed.
- (d) Except as set forth in in Schedule 4.13(d), neither the execution of this Agreement nor the completion of any of the transactions contemplated by this Agreement will result in any payment (including bonus, golden parachute, change in control, retirement, severance, unemployment compensation, or other benefit or enhanced benefit) becoming payable by the Transit Commission to any Employee.

4.14 Employee Benefits and Plans.

- (a) Schedule 4.14(a) sets forth copies of each the Employee Benefit Plans, as amended to the date of this Agreement, as well as summary descriptions of each of the Employee Benefit Plans provided to current Employees, have been provided to or made available to the Transit Commission. There have been no promised material improvements, increases or changes to the benefits provided under any the Employee Benefit Plan. None of each of the Employee Benefits Plans is a registered or unregistered pension plan.
- (b) Neither the execution of this Agreement nor the completion of any of the transactions contemplated by this Agreement will:
 - (i) increase any benefits otherwise payable under any the Employee Benefit Plan;
 - (ii) entitle any Employee to any job security or similar benefit or any enhanced benefits; or
 - (iii) result in the acceleration of the time of payment or vesting of any benefits otherwise payable under any the Employee Benefit Plan.

4.15 Material Contracts. Schedule 4.15 sets forth a list of all currently effective Contracts of Fort Erie in the following categories:

- (a) each Contract with a term that continues past the Closing Date;
- (b) each Contract under which Fort Erie has: (i) created, incurred, assumed or guaranteed Indebtedness or created any security interest pursuant to any borrowing, in each case having an outstanding principal amount in excess of \$100,000, or (ii) an obligation to make an investment in or loan to any Person in excess of \$100,000;
- (c) each Contract for the purchase by Fort Erie of goods or services involving total annual payments in excess of \$10,000;
- (d) each Contract for the sale by Fort Erie of goods or services involving total annual revenues in excess of \$10,000;
- (e) each Contract containing covenants materially restricting or limiting the freedom of Fort Erie to engage in any line of business;
- (f) each Contract relating to capital expenditures or improvements in excess of \$10,000 in the aggregate;

- (g) each Contract obligating Fort Erie to pay royalties, license fees or similar payments involving amounts in excess of \$10,000 in any consecutive twelve (12) month period;
- (h) each Contract relating to the settlement of any dispute under which Fort Erie has ongoing monetary obligations in excess of \$10,000; and
- (i) each Contract that requires the consent of or notice to a third party for an assignment of the Contract or any similar provision that gives the counterparty the right to terminate or modify such Contract as a result of the transactions contemplated by this Agreement.

With regard to the foregoing:

- (j) Fort Erie has delivered or made available to the Transit Commission true and complete copies of each Contract listed in Schedule 4.15 (each, a “Material Contract”);
 - (k) each Material Contract is: (i) a valid and binding obligation of Fort Erie and, (ii) to Fort Erie’s Knowledge, a valid and binding obligation of each other party thereto;
 - (l) Fort Erie is not in breach of or default under any Material Contract, except where such breach or default would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and
 - (m) the consummation of the transactions contemplated by this Agreement will not conflict with or violates any provision of any Material Contract or require the consent of any other party to any such Material Contract.
- 4.16 Full Disclosure. Neither this Agreement nor any other certificate, statement, agreement or other documents furnished to the Transit Commission in connection herewith or therewith, to Fort Erie’s Knowledge contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not misleading. To Fort Erie’s Knowledge there is no fact known to Fort Erie which materially adversely affects the business, property, assets, financial condition, results of operations or prospects of the Business which has not been set forth in this Agreement or in the certificates, statements, agreements or other documents furnished in writing to the Transit Commission prior to or at the date hereof in connection with the transactions contemplated hereby.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE TRANSIT COMMISSION

The Transit Commission represents and warrants to Fort Erie as follows:

- 5.1 Organization. The Transit Commission is a municipal services board established by the Region under section 196 of the *Municipal Act, 2001* that is duly organized, validly existing and in good standing under the laws of Ontario, and having full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.
- 5.2 Authorization; Enforceability. This execution and delivery by the Transit Commission of this Agreement and the performance by the Transit Commission of its obligations hereunder have been duly and validly authorized by all necessary proceedings by the Transit Commission. The Transit Commission has duly executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding obligation of the Transit Commission, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other laws of general application relating to or affecting creditors’ rights and to general principles of equity.
- 5.3 No Pending Litigation or Proceedings. No Actions or Proceedings are pending against or affecting or, to the knowledge of the Transit Commission, threatened against the Transit Commission in connection with the transactions contemplated by this Agreement. There is no outstanding Order against or affecting the Transit Commission in connection with the transactions contemplated by

this Agreement. There is no legal impediment to the Transit Commission's consummation of the transactions contemplated by this Agreement.

- 5.4 Independent Investigation. The Transit Commission is relying on the cooperation between Fort Erie to identify assets and concerns as well as a limited investigation by the Region, of the financial condition, results of operations, assets, liabilities, properties and projected operations of Fort Erie and the Business.
- 5.5 No Knowledge of Misrepresentations or Omissions. The Transit Commission has no knowledge that any of the representations and warranties of Fort Erie in this Agreement are not true and correct in all material respects, and the Transit Commission has no knowledge of any material errors in, or material omissions from, the Exhibits or Schedules hereto.

ARTICLE VI ADDITIONAL AGREEMENTS

- 6.1 Publicity. The parties will work together in good faith on media releases respecting the Closing, and under the guidance of the Region.
- 6.2 Further Assurances. Each party will execute and deliver such further instruments, shall obtain all necessary consents, and shall take such further actions as may be reasonably requested by the other party to confirm and carry out the transactions contemplated by this Agreement. The parties expect that Closing may be accomplished in escrow in advance of the Closing Date in order to facilitate the timely application of the terms of this Agreement.

ARTICLE VII COVENANTS

- 7.1 Consent to Transfer Not Obtained Prior to Closing. If any rights, benefits or remedies under any Assumed Contract (the "Contract Rights") are not assignable to the Transit Commission without the consent of the other party or parties to that Contract (or a third party) and that consent is not obtained by the Time of Closing and the Closing occurs, then from and after the time of Closing:
- (a) each such Assumed Contract (a "Non-Assigned Contract") will be deemed not to have been assigned by Fort Erie to the Transit Commission under this Agreement;
 - (b) Fort Erie shall hold the Assumed Contract in trust for the exclusive benefit of the Transit Commission;
 - (c) Fort Erie shall, at the request and expense and under the direction of the Transit Commission, acting reasonably, do all things or cause all things to be done that the Transit Commission, acting reasonably, considers necessary or desirable to perform the obligations of Fort Erie under the Non-Assigned Contracts so as to preserve the value of the Contract Rights, ensure that those Contract Rights will enure to the benefit of the Transit Commission, and ensure that all amounts receivable under the Non-Assigned Contracts will be received by the Transit Commission;
 - (d) that Fort Erie shall promptly pay over to the Transit Commission all amounts collected by Fort Erie under the Non-Assigned Contracts;
 - (e) the Transit Commission shall promptly pay all amounts payable under the Non-Assigned Contracts or, if any such amount is paid by Fort Erie, shall promptly reimburse Fort Erie for any amount so paid;
 - (f) Fort Erie and the Transit Commission shall make commercially reasonable efforts and cooperate with each other in good faith to obtain the necessary consents under the Non-Assigned Contracts; and
 - (g) if Fort Erie obtains the necessary consent under a Non-Assigned Contract in a form satisfactory to the Transit Commission, acting reasonably, then, effective as of the date the Transit Commission receives a copy of that consent, that Non-Assigned Contract will be deemed to have been assigned and transferred by Fort Erie to the Transit Commission.

7.2 Books and Records. Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, Fort Erie shall deliver to the Transit Commission on or before January 1, 2023 all the Books and Records. The Transit Commission covenants to use reasonable care to preserve the Books and Records so delivered to it for a period of six (6) years from the Closing Date, or for such longer period as is required by any applicable Legal Requirements, and will permit Fort Erie or their authorized representatives reasonable access thereto in connection with the affairs of Fort Erie relating to their matters, but the Transit Commission shall not be responsible or liable to Fort Erie for or as a result of any accidental loss or destruction of or damage to any such books or records.

7.3 Conduct of Business Prior to Closing. Without in any way limiting any other obligations of Fort Erie hereunder, during the Interim Period, Fort Erie shall:

- (a) conduct its Business only in the ordinary course consistent with past practice;
- (b) continue to maintain in full force and effect all policies of insurance or renewals thereof now in effect and shall give all notices and present all claims under all policies of insurance in a due and timely fashion;
- (c) use all commercially reasonable efforts to preserve intact the Business and Transferred Assets and to carry on the Business as currently conducted and to preserve for the Transit Commission the goodwill of suppliers, customers and others having business relations with Fort Erie;
- (d) use all commercially reasonable efforts to maintain in full force and effect Fort Erie' rights in the Intellectual Property;
- (e) comply with applicable laws in all material respects;
- (f) pay and discharge the liabilities of Fort Erie relating to the Business in the ordinary course in accordance and consistent with the previous practice of Fort Erie, except those contested in good faith by Fort Erie;
- (g) use all commercially reasonable efforts to retain the services of the present executives, employees, consultants and advisors of or to Fort Erie in relation to the Business;
- (h) use all commercially reasonable efforts to satisfy the conditions contained in Article VIII;
- (i) allow the Region or the Transit Commission reasonable access to such premises and assets, including the relevant Books and Records, during regular business hours as required to conduct any due diligence required and on reasonable notice, provided that any such investigations do not unreasonably interfere with the ordinary conduct of the Business; and
- (j) not sell, transfer or otherwise deal any of the Purchased Assets,

unless:

- (k) otherwise consented to in writing by the Transit Commission;
- (l) required (or otherwise occurs) as a result of the announcement or pendency of this Agreement or in connection with the observation of the terms herein; or
- (m) otherwise required by a duly approved budget of Fort Erie for the Interim Period that has been provided to the Transit Commission at least seven days in advance of the earlier of the execution of this Agreement and the start of the Interim Period.

To the extent this Section 7.3 results in changes that would require amendments to any Schedule to this Agreement in order for such Schedules to remain true and accurate, such amendments shall be validly made and accepted by all parties if the applicable parties have complied with this Section 7.3 with regard to such changes and have provided the Transit Commission with reasonable written notice of such changes.

7.4 Employees.

- (a) Fort Erie shall provide to the Transit Commission an up-to-date list of the names of the Employees at least ten (10) Business Days prior to the Closing Date.
- (b) Fort Erie shall employ all of the Employees set out in Schedule 4.13(a) until the Time of Closing except for any Employees who prior to the Time of Closing: (i) are terminated for cause; (ii) are terminated with the Transit Commission's consent, which consent shall not be unreasonably withheld or delayed; (iii) voluntarily resign; or (iv) retire. Fort Erie shall not attempt in any way to discourage any of the Employees from being employed by the Transit Commission or accepting any offer of employment to be made by the Transit Commission, as applicable.
- (c) All records relating to the Transferred Employees who will transfer to the Transit Commission and all records related to all forms of interaction with an Amalgamated Transit Union ("ATU") and current ATU members will be transferred to the Transit Commission upon Closing.
- (d) The *Municipal Freedom of Information and Protection of Privacy Act* applies to the transfer of employee records and personal information under this Agreement.
- (e) The Transit Commission shall, fourteen (14) days prior to the Closing Date, with effect as of the Closing Date but subject to Closing, make and deliver offers of employment, including benefits, to any non-union Employees that it intends to employ at the Transit Commission, on the same terms (and no less in the aggregate) under which such Employee was employed by the Municipality on the transition date. For greater certainty, the Transit Commission shall not be required to make offers to any particular non-union Employee or to all non-union Employees. The Transit Commission will recognize the service of the Transferred Employees with the Municipality for all employment purposes, including notice, severance and termination. In the event that the Transit Commission does not make an offer to an Employee and the Municipality elects to terminate such Employee, the liability for such termination will be apportioned as set out in Schedule 4.13(d)
- (f) The will remain responsible and liable for all amounts which have accrued and are unpaid to all Employees prior to the Time of Closing including, without limitation, all wages, salary, bonus and employee benefits, save and except to the extent that the Transit Commission is assuming any such obligations as part of the Assumed Liabilities.

7.5 Employee Plans. From the Closing Date and for a period of no less than two (2) years thereafter, the Transit Commission agrees that it will establish replacement plans for those Employees who become Employees of the Transit Commission pursuant to Section 2.1(d) in order to provide to such Transferred Employees, in respect of their employment with Transit Commission from and after the Time of Closing, benefits that are, in the aggregate, substantially comparable to those provided to such employees immediately prior to the Closing as set forth on Schedule 4.14. With respect to any benefits plans of the Transit Commission in which such employees participate after the Closing Date, the Transit Commission shall: (i) waive any limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the employees under any welfare benefit plan in which such employees may be eligible to participate after the Closing Date; provided, however, that no such waiver shall apply to a pre-existing condition of any such employee who was, as of the Closing Date, excluded from participation in a benefit plan of Fort Erie by nature of such pre-existing condition to the extent permitted by law, (ii) provide each such employee with credit for any co-payments and deductibles paid prior to the Closing Date during the year in which the Closing Date occurs in satisfying any applicable deductible or out-of-pocket requirements under any welfare benefit plan in which such employees may be eligible to participate after the Closing Date, and (iii) recognize all service of such employees with Fort Erie for purposes of eligibility to participate, vesting credit, entitlement for benefits and benefit accrual (excluding accrual under a defined benefit pension plan and a retiree medical plan) in any benefit plan in which such

employees may be eligible to participate after the Closing Date, except to the extent such treatment would result in duplicative benefits. Nothing contained herein, express or implied: (x) shall alter or limit the ability of the Transit Commission, or any of its Affiliates to amend, modify or terminate any benefit plan, program, agreement or arrangement at any time assumed, established, sponsored or maintained by any of them (in each case, subject to compliance with the terms of any collective agreement, written employment agreement and/or any other applicable agreement), (y) shall be deemed to be a guarantee of an offer or transition of employment for any employee (except where applicable pursuant to the terms of a collective agreement or otherwise required by law) , or (z) is intended to confer upon any Person (including employees, retirees, or dependents or beneficiaries of employees or retirees) any right as a third-party beneficiary of this Agreement. In the event that, after the date of Closing, the Transit Commission or any of its respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or a substantial portion of its properties and assets to any Person, then, and in either such case, proper provisions shall be made so that the successors and assigns of the Transit Commission shall assume the obligations set forth in this Section 7.5.

7.6 Vacation. As at the close of business on the day immediately prior to the Closing Date, Fort Erie shall accrue as a liability in its accounts, an aggregate amount (the "Vacation Amount") equal to all accrued and unpaid vacation pay earned or accrued by the Transferred Employees up to the Closing Date and provide the Transit Commission with a list of the Transferred Employees specifying such amounts for each such Transferred Employee on or before the Closing Date. Each Municipality shall transfer the Vacation Amount to the Transit Commission subject to adjustment for any amounts paid out to Transferred Employees prior to the employment of such Transferred Employee with the Transit Commission. Subject to compliance with applicable law, with respect to each Transferred Employee, the Transit Commission shall allow the Transferred Employee to take vacation time equal to the portion of the Vacation Amount applicable to the Transferred Employee in accordance with the Transit Commission's policies.

7.7 Post-Closing Use of Personal Information.

- (a) From and after the Closing Date, the Transit Commission covenants to: (i) use and disclose the Personal Information for the sole purposes for which it was collected, used or disclosed by Fort Erie in the Business prior to the Closing and only if necessary for the conduct of the Business after Closing; (ii) protect and keep secure the Personal Information in a manner appropriate to the sensitivity of the Personal Information; and (iii) give effect to any withdrawal of consent to collect, use or disclose the Personal Information.
- (b) The Transit Commission covenants to notify individuals whose Personal Information is transferred to the Transit Commission pursuant to this Agreement within thirty (30) days of Closing and the disclosure and/or transfer of their Personal Information.

7.8 Post-Closing Adjustments. On a timely basis and no later than September 30, 2023, Fort Erie shall provide to the Transit Commission:

- (a) The results of an audit of the transfer of the Transferred Assets and the Assumed Liabilities by Fort Erie, which shall set out in detail any amounts accrued or received by Fort Erie that, in the determination of such audit, was connected to the Transferred Assets or the Assumed Liabilities in a manner where the payment to the Transit Commission of the amount in question would be appropriate; and
- (b) Any such payment as may be determined under Section 7.8(a).

Should such audit not be feasible, Fort Erie shall cooperate reasonably and in good faith with any such additional procedures the Transit Commission reasonably and in good faith deems necessary to validate the accuracy, completeness and existence of the Transit Commission's opening balances.

- 7.9 Carriage of Active Litigation. Following the Closing, Fort Erie shall continue to have ongoing carriage of the negotiation, defence or settlement of any Actions and Proceedings set forth on Schedule 4.8; provided however, that if the Transit Commission would be materially affected by the outcome of any such action, proceeding or causes of action, Fort Erie agree to reasonably consult with the Transit Commission, and the Transit Commission agrees to reasonably cooperate with Fort Erie, in Fort Erie's ongoing carriage of the matter.
- 7.10 Reserve Funds. Where funds are transferred by Fort Erie in accordance with Section 2.1(h), and such funds are required to be held in a special reserve account(s), the Transit Commission hereby covenants that all funds will be placed in a separate special reserve fund, in accordance with any applicable legislative requirements.
- 7.11 Development Charges Reserve Funds. Where development charges are transferred to the Region in accordance with Section 2.5 by Fort Erie, the Region hereby covenants that all such development charges will be placed in a separate special reserve fund for the purposes of transit, in accordance with the requirements of the *Development Charges Act*, 1997, SO 1997, c. 27, as amended.

ARTICLE VIII CONDITIONS TO CLOSING

- 8.1 Transfer. Subject to compliance with the terms and conditions hereof, the transfer of possession of the Transferred Assets shall be deemed to take effect as of the Time of Closing. The Closing shall take place electronically on the Closing Date. Unless otherwise agreed, all closing transactions shall be deemed to have occurred simultaneously.
- 8.2 Closing Mechanics. A pre-closing shall take place on the Business Day immediately preceding the Closing Date, at which all Closing Deliveries shall be tabled or delivered into escrow with the applicable solicitors, to be held in accordance with the escrow arrangements to be agreed to by the parties and their respective solicitors prior to the Closing Date. Such escrow arrangements shall provide for the registration of the Registration Documents and the release of the Closing Deliveries, all in a manner that recognizes and reconciles the customary practices in each of the provinces in which the Transferred Assets are located.
- 8.3 Risk of Loss. From the date hereof up to the Time of Closing, the Transferred Assets shall be and remain at the risk of Fort Erie. If, prior to the Time of Closing, all or any part of the Transferred Assets which are necessary to carry on the Business at any location as currently conducted are destroyed or damaged by fire or any other casualty or are appropriated, expropriated or seized by a governmental or other lawful authority, then, unless the Transit Commission terminates its obligations under this Agreement as contemplated by Section Error! Reference source not found.:
- (a) Fort Erie and the Transit Commission shall complete the transaction;
 - (b) all proceeds of insurance or compensation for expropriation or seizure received by Fort Erie prior to Closing shall be paid to the Transit Commission at the Time of Closing and all right and claim of Fort Erie to any such amounts not received by Fort Erie prior to Closing shall be assigned at the Time of Closing to the Transit Commission; and
 - (c) any claim Fort Erie may have against any Person in connection with such destruction or damage shall be assigned to the Transit Commission at the Time of Closing.
- 8.4 Closing Deliveries by Fort Erie. At the Closing, Fort Erie shall deliver or cause to be delivered to the Transit Commission, each in form and substance satisfactory to the Transit Commission, acting reasonably, the following documents as applicable:
- (a) the bring-down certificates referred to in Section 8.6(a);
 - (b) customary deeds, leases, assignments, agreements, bills of sale and other conveyancing documents, sufficient to transfer the various categories of Transferred Assets described in Section 2.1 free and clear of all Encumbrances other than Permitted Encumbrances including, registrable assignments of the leasehold interests in the Leased Real Property

and ancillary documents that are customarily delivered with or as part of such transfers and assignments (such registrable documents, the "Registration Documents");

- (c) an interim report of the expected post-closing adjustments set out in Section 7.8;
- (d) a purchase certificate issued by the Workplace Safety and Insurance Board stating that Fort Erie does not owe any amounts or is in default under the *Workplace Safety and Insurance Act, 1997* (Ontario) or similar certificate in each other province in which Fort Erie carry on the Business;
- (e) a receipt for the Purchase Price;
- (f) a transition agreement, in form to be negotiated by the applicable parties, addressing any amendments to the timing or contents of the transfers contemplated herein as well as such other matters as may be determined by the applicable parties;
- (g) licences to use each of the Pending Assets and In-flight Projects, as well any Intellectual Property required for the conduct of the Business;
- (h) registered discharges of all Encumbrances affecting the Transferred Assets that are not Permitted Encumbrances;
- (i) all forms, elections and other documents which Fort Erie is required to deliver; and
- (j) such other certificates and other documents as the Transit Commission may reasonably request in order to establish the due authorization and completion of the transactions contemplated by this Agreement.

8.5 Closing Deliveries by Transit Commission. At the Closing, the Transit Commission shall deliver or cause to be delivered to Fort Erie, each in form and substance satisfactory to Fort Erie, acting reasonably:

- (a) the bring-down certificates referred to in Section 8.7(a);
- (b) the documents referred to in Section 8.4(b);
- (c) the Purchase Price;
- (d) a copy of the By-law of the Transit Commission indicating its adoption of the applicable principles in Appendix A;
- (e) a receipt for the Transferred Assets acknowledging the purchase of the Transferred Assets pursuant to this Agreement;
- (f) a transition agreement, in form to be negotiated by the applicable parties, addressing any amendments to the timing or contents of the transfers contemplated herein as well as such other matters as may be determined by the applicable parties;
- (g) an instrument of assumption of the Assumed Liabilities;
- (h) all forms, elections and other documents which each of the Transit Commission is required to deliver; and
- (i) such other certificates and other documents as Fort Erie may reasonably request in order to establish the due authorization and completion of the transactions contemplated by this Agreement.

8.6 Conditions Precedent to Obligations of the Transit Commission. The obligations of the Transit Commission to consummate the Closing is subject to the fulfillment at or before the Closing of each of the following conditions, any one or more of which may be waived in whole or in part by the Transit Commission:

- (a) *Bringdown of Representations and Warranties; Covenants.* The representations and warranties of Fort Erie in Article III of this Agreement shall be true and correct in all material respects and the covenants of Fort Erie contemplated by this Agreement to be

performed before the Closing Date shall have been performed (except where the failure to be so true and correct or so performed would not, in the aggregate, constitute a Material Adverse Effect), in each case, on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made as of the Closing Date, except to the extent that any representation and warranty refers to an earlier date, in which case any such representation and warranty shall be so true and correct as of such earlier date, or to the extent that such representation and warranties are modified by any Schedule that has been amended in accordance with the terms hereof, in which case such representations and warranties shall be accepted as modified. There shall be delivered to the Transit Commission a certificate of an executive officer of Fort Erie (certifying in that capacity and not personally) dated the Closing Date to the effect that this condition in respect of the representations, warranties and covenants of Fort Erie has been satisfied.

- (b) *Regulatory Matters.* No Order will be in force, and no action or proceeding will be pending or threatened by any Governmental Authority, to restrain or prohibit the completion of the transactions contemplated by this Agreement.
- (c) *No Material Adverse Effect.* Since the date of this Agreement, any Material Adverse Effect affecting Fort Erie shall have been promptly communicated to the Transit Commission, including any remediation or mitigation plan that may be applicable, to the satisfaction of the Transit Commission; and
- (d) *Closing Deliveries by Fort Erie.* Fort Erie shall be ready, willing and able to make the deliveries required by Section 8.4.

8.7 Conditions Precedent to Obligations of Fort Erie. The obligations of Fort Erie to consummate the Closing is subject to the fulfillment at or before Closing of each of the following conditions, any one or more of which may be waived in whole or in part by Fort Erie:

- (a) *Bringdown of Representations and Warranties; Covenants.* The representations and warranties of the Transit Commission in Article V of this Agreement shall be true and correct in all material respects and the covenants of the Transit Commission contemplated by this Agreement to be performed before the Closing Date shall have been performed (except where the failure to be so true and correct would not materially adversely affect the Transit Commission's ability to consummate the transactions contemplated by this Agreement), in each case, on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made as of the Closing Date, except to the extent that any representation and warranty refers to an earlier date, in which case any such representation and warranty shall be so true and correct as of such earlier date. There shall be delivered to Fort Erie a certificate of an executive officer of the Transit Commission (certifying in that capacity and not personally) dated the Closing Date to the effect that such condition has been satisfied.
- (b) *Regulatory Matters.* No Order will be in force, and no action or proceeding will be pending or threatened by any Governmental Authority, to restrain or prohibit the completion of the transactions contemplated by this Agreement.
- (c) *Closing Deliveries by Transit Commission.* The Transit Commission shall be ready, willing and able to make the deliveries required by Section 8.5.

ARTICLE IX INDEMNIFICATION

9.1 Survival of Representations, Warranties and Covenants. All representations, indemnifications, warranties and covenants contained in this Agreement and in all other agreements, documents and certificates delivered pursuant to or contemplated by this Agreement (other than the conditions of closing set out in Article VIII) shall survive the Closing and shall not merge.

9.2 Indemnification Obligations of Fort Erie for its Representations. If the Closing shall take place and subject to the limitations and other provisions set forth in this Article IX, Fort Erie shall, on a

several basis, defend, indemnify and hold harmless the Transit Commission and its Affiliates (each, a “Transit Commission Indemnified Party”) at all times after the Closing Date against and in respect of all Losses suffered or incurred by any Transit Commission Indemnified Party resulting from, arising out of or in connection with:

- (a) the breach of any representation or warranty made by Fort Erie in Article III provided that notice of such breach has been given by the Transit Commission to Fort Erie on or prior to the applicable date specified in Section 9.4(a);
- (b) the breach of any agreement or covenant made by Fort Erie in this Agreement which by its terms contemplates performance after the Closing; and
- (c) the Retained Liabilities of Fort Erie.

9.3 Indemnification Obligations of the Transit Commission. If the Closing shall take place and subject to the limitations and other provisions set forth in this Article IX, the Transit Commission at its own expense shall defend, indemnify and hold harmless Fort Erie and its Affiliates (each, a “the Fort Erie Indemnified Party”) at all times after the Closing Date against and in respect of all Losses suffered or incurred by Fort Erie Indemnified Party resulting from, arising out of or in connection with:

- (a) the breach of any representation or warranty made by the Transit Commission in Article V hereof or in any certificate delivered pursuant to Section 8.7(a), provided that notice of such breach has been given by Fort Erie to the Transit Commission on or prior to the applicable date specified in Section 9.4(a); and
- (b) the breach of any agreement or covenant made by the Transit Commission in this Agreement which by its terms contemplates performance after the Closing; and
- (c) any failure by the Transit Commission following the Closing Date to pay, satisfy, discharge, perform or fulfil any of the Assumed Liabilities.

9.4 Limits on Indemnifications

- (a) No claim may be asserted against Fort Erie for indemnification pursuant to Section 9.2 or against the Transit Commission pursuant to Section 9.3, unless written notice of such claim pursuant to Section 9.5 is received by Fort Erie or the Transit Commission, as applicable, describing in reasonable detail the facts and circumstances with respect to the subject matter of such claim, on or before the date which is one (1) year after the Closing Date, and any claim brought after such date shall be barred.
- (b) Neither the Transit Commission nor any Affiliate of the Transit Commission shall have any claim or recourse against Fort Erie or its employees, Affiliates, controlling persons, agents, advisors or representatives, under this Article IX or otherwise, if the Transit Commission or any Affiliate of the Transit Commission had, prior to the execution of this Agreement, actual knowledge of the subject matter of such claim.
- (c) An Indemnified Party shall not be entitled to double recovery for any indemnification claim even though such indemnification claim may have resulted from the breach of one or more representations, warranties or covenants in this Agreement.
- (d) Indemnification obligations pursuant to this Article IX shall also be limited by the provisions for computation of Losses and other principles set forth in Section 9.6.

9.5 Procedures.

- (a) If an Indemnified Party receives notice of an Action or Proceeding brought by a third party (a “Third Party Proceeding”) for which the Indemnified Party intends to assert an indemnification claim under Section 9.2 or Section 9.3 against the Indemnifying Party, then the Indemnified Party shall give notice of such proceeding to the Indemnifying Party within ten (10) days after receipt of written notice thereof from such third party, or sooner, to the extent a reply is required before then under the Third Party Proceeding, in which case, the Indemnified Party shall give notice of such proceeding to the Indemnifying Party

within the initial one third (1/3) of the term available under the applicable rules to respond to such Third Party Proceeding. The Indemnifying Party shall assume the defence of any such Third Party Proceeding by notice to the Indemnified Party no later than five (5) Business Days prior to the date by which an answer or other response to the Third Party Proceeding is required to be made. Any failure by either party to give the requisite notice within the time specified in this Section 9.5(a) will not relieve the Indemnifying Party of the obligation to indemnify the Indemnified Party or the obligation of the Indemnified Party to allow the Indemnifying Party to defend pursuant to this Section 9.5, except to the extent that the defence of any Third Party Proceeding is materially prejudiced by the delay.

- (b) If the Indemnifying Party assumes the defence of a Third Party Proceeding pursuant to this Section 9.5, then the Indemnifying Party may defend and conduct any proceedings or negotiations in connection with the Third Party Proceeding, take all other required steps or proceedings to settle or defend any Third Party Proceeding, and employ counsel of its choice to contest such Third Party Proceeding in the name of the Indemnified Party or otherwise.
- (c) If the Indemnifying Party does not assume the defence of the Third Party Proceeding (having been given a proper opportunity to do so), or if after so assuming the Indemnifying Party fails to defend, any Third Party Proceeding, then the Indemnified Party may defend against such Third Party Proceeding in a manner reasonably appropriate and the Indemnified Party may settle such Third Party Proceeding on such terms as are reasonable in the circumstances and the costs and expense of such defence shall be Losses subject to indemnification. Notwithstanding the foregoing, the Indemnifying Party may not enter into a settlement of any Third Party Proceeding without the written consent (which may not unreasonably be withheld, delayed or conditioned) of the Indemnified Party unless such settlement provides the Indemnified Party with a full release from such Third Party Proceeding and requires no more than a monetary payment for which the Indemnified Party is fully indemnified.
- (d) The Indemnified Party shall have the right to participate in the defence of any Third Party Proceeding related to any indemnified Losses where the defence has been and continues to be assumed by the Indemnifying Party, at the Indemnified Party's sole cost and expense and the costs and expenses of that participation shall not be Losses subject to indemnification.
- (e) Each of the Indemnified Party and the Indemnifying Party will make its best efforts to make available to the party who has assumed carriage and control of the negotiation, defence or settlement of a Third Party Proceeding those employees whose assistance or evidence is necessary to assist that party in evaluating and defending that Third Party Proceeding and all documents, records and other materials in the possession or control of that party required for use in the negotiation, defence or settlement of that Third Party Proceeding.

9.6 Computation of Losses and Other Principles.

- (a) In no event shall any party be liable for punitive, consequential, special, lost profits, loss of business, business reputation or opportunity, or similar damages under or in connection with this Agreement or the transactions contemplated hereby, regardless of whether a claim is based on contract, tort, strict liability or any other legal or equitable principle, and each party releases the other party from liability for any such damages, except to the extent the Indemnified Party is liable for such damages to any third party (including any Governmental Authority but excluding any Affiliate of a party to this Agreement).
- (b) For purposes of Article IX, Losses shall be reduced by insurance or other recoveries.
- (c) If an Indemnified Party recovers an amount from a third party in respect of an indemnification claim after all or a portion of the Losses related thereto have been paid by an Indemnifying Party, the Indemnified Party shall promptly remit to the Indemnifying

Party the amount recovered from such third party, up to the maximum amount paid on account of such indemnification claim.

- (d) Nothing in this Agreement shall in any way restrict or limit the general obligation at law of an Indemnified Party to mitigate any damages which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty or covenant of the Indemnifying Party under this Agreement.
- (e) A party seeking indemnification shall not be entitled to any award of damages in relation to any breach of the representations and warranties given by another party to the extent that no actual Loss is suffered or arises and the claim for indemnification relates only to the fact that the representation or warranty is untrue, misleading or otherwise inaccurate.
- (f) To the extent that any party hereto is prevented from performing any of its covenants or post-closing obligations to any other party hereto (in this Agreement or otherwise in connection with the Business) as a result of that party's breach of its representations, warranties or covenants contained herein, the prevented party shall be relieved of such obligation for as long as the breach of such representation, warranty or covenant materially impacts the prevented party's ability to perform such covenant to post-closing obligation.

9.7 Exclusive Remedies.

- (a) Fort Erie has not made, nor is making, any representation or warranty of any kind or nature whatsoever, oral or written, express or implied (including, but not limited to, any relating to financial condition, results of operations, assets or liabilities of Fort Erie), except as expressly set forth in Article III and the Exhibits and Schedules hereto, and Fort Erie hereby disclaims any such other representations or warranties. Other than the indemnification obligations of Fort Erie set forth in Article IX, none of Fort Erie, its Affiliates, or any of their respective employees or representatives will have or be subject to any liability or indemnification obligation to the Transit Commission or to any other person resulting from the distribution to the Transit Commission, its Affiliates or representatives of, or the Transit Commission's use of, any information relating to the business, and any information, documents or material made available to the Transit Commission, whether orally or in writing, in data rooms, management presentations, responses to management presentations, responses to questions submitted on behalf of the Transit Commission or in any other form in expectation of the transactions contemplated by this Agreement.
- (b) If the Closing takes place, the indemnities set forth in this Article IX shall be the only remedies available to the specified Indemnified Party with respect to the matters giving rise to such indemnification. If the Closing takes place, no party shall be entitled to assert against another party any claim for damages, indemnification or otherwise relating to the transactions under this Agreement except pursuant and subject to the provisions of this Article IX and only to the extent such claim is based upon a breach of a representation or warranty made in or under this Agreement, a breach of any covenant, agreement or obligation made in or under this Agreement or an indemnification obligation under this Article IX. Notwithstanding the foregoing, this Article IX shall not affect any remedy any party may have under this Agreement before the Closing or upon termination of this Agreement or any equitable remedy available to any party.
- (c) No party shall be entitled to rescission of this Agreement as a result of breach of a party's representations, warranties, covenants or agreements, or for any other matter.

ARTICLE X DISPUTE RESOLUTION AND VENUE

- 10.1 Any dispute, claim or controversy arising out of or relating to this Agreement or the formation, breach, termination, enforcement, interpretation or validity hereof or thereof, including any request for specific performance, claim based on contract, tort, statute or constitution or the

determination of the scope or applicability of this agreement to arbitrate, will be finally determined by arbitration in the City of St. Catharines, Province of Ontario, Canada before one arbitrator. The arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, as modified in this Article X.

- 10.2 The arbitrator will have the power to order hearings and meetings to be held in such place or places as he or she deems in the interests of reducing the total cost to the parties of the arbitration. The arbitration proceedings will be conducted in English.
- 10.3 The arbitrator will have the power to order any remedy, including monetary damages, specific performance and all other forms of legal and equitable relief, except that the arbitrator will not have the power to order punitive damages. The arbitrator may hear and rule on dispositive motions as part of the arbitration proceeding (e.g., motions for summary disposition).
- 10.4 The arbitrator will have the power to continue any hearing or meeting date or the rendering of any award until the amount of an estimated or anticipated Loss set forth in a claims notice is finally determined.
- 10.5 Each party will be entitled to the timely production by the other party of relevant, non-privileged documents or copies thereof. If the parties are unable to agree on the scope and/or timing of such document production, the arbitrator will have the power, upon application of any party, to make all appropriate orders for the production of documents by any party.
- 10.6 Before the arbitrator establishes the facts of the case, each party will be entitled to examine witnesses by deposition to provide non-privileged testimony that is relevant to the controversies, claims or disputes at issue. If the parties are unable to agree on the propriety, scope or timing of a deposition, the arbitrator, upon the application of any party, may make all appropriate orders in connection with a proposed deposition.
- 10.7 The arbitrator may appoint expert witnesses only with the consent of all of the parties to the arbitration. The arbitrator's fees and the administrative expenses of the arbitration will be paid equally by the parties. Each party to the arbitration will pay its own costs and expenses (including attorney's fees) in connection with the arbitration.
- 10.8 The award rendered by the arbitrator will be executory, final and binding on the parties. The award rendered by the arbitrator may be entered into any court having jurisdiction, or application may be made to such court for judicial acceptance of the award and an order of enforcement, as the case may be. Such court proceeding will disclose only the minimum amount of information concerning the arbitration as is required to obtain such acceptance or order.
- 10.9 Except as required by any Legal Requirement, no party to this Agreement may disclose the existence, contents or results of an arbitration brought in accordance with this Agreement, or the evidence produced by its opposing parties, or any analyses or summaries derived from such evidence.
- 10.10 Each party to this Agreement hereby agrees that in connection with any such action process may be served in the same manner as notices may be delivered under Section 11.1 and irrevocably waives any defences it may have to service in such manner.
- 10.11 Each party to this Agreement hereby agrees that this Agreement does not preclude parties from seeking provisional remedies in aid of arbitration from the trial courts of superior jurisdiction located in the City of St. Catharines, Province of Ontario, Canada. For the purposes of this Section, each of the parties hereto consents to submit itself to the personal jurisdiction of the courts described in the first sentence of this Section, agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other application, agrees that it will not bring any Actions or Proceedings relating to this Agreement or any of the transactions contemplated in this Agreement in any other court, agrees that it will not assert as a defence that such Actions or Proceedings may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts, and agrees that mailing of process or other papers in connection with any such Actions or

Proceedings in the manner provided in Section 11.1 or in such other manner as may be permitted by Legal Requirements will be valid and sufficient service thereof.

**ARTICLE XI
MISCELLANEOUS**

11.1 Notices. All notices, requests, demands, claims and other communications hereunder (a “Notice”) shall be in writing. Any Notice regarding the matters contemplated by this Agreement must be in writing and delivered personally or sent by courier (along with, where possible, a copy by electronic mail), as follows:

if to the Transit Commission, to:

[_____]

[_____]

[_____]

Telephone: []

Attn: []

with a required copy to:

[]

if to Fort Erie, to:

1 Municipal Centre Drive
Fort Erie, ON L2A 2S6

Telephone: 905-871-1600
Attn: Town Clerk

Email: cschofield@forterie.ca with a required copy to:

The Corporation of the Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, ON L2A 2S6

Telephone: [905-871-1600
Attn: Jennifer Pennell-Ajie
Executive Assistant to the Director, IS & Division Coordinator
Email: jpennellajie@forterie.ca

A Notice is deemed to be delivered and received (i) if delivered personally, on the date of delivery if delivered prior to 5:00 p.m. (recipient’s time) on a Business Day and otherwise on the next Business Day; (ii) if sent by same day courier, on the date of delivery if delivered prior to 4:30 p.m. (recipient’s time) on a Business Day and otherwise on the next Business Day; or (iii) if sent by overnight courier, on the next Business Day. A party may change its address for service from time to time by notice given in accordance with the foregoing provisions.

11.2 Assignment. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof nor any of the documents executed in connection herewith may be assigned by any party without the consent of the other party, which consent may be granted or withheld in the discretion of such other party; provided, however, that any transferee of any party to this Agreement shall agree to assume all obligations under this Agreement of Fort Erie. Nothing contained herein, express or implied, is intended to confer upon any Person other than the parties any rights or remedies under or by reason of this Agreement.

11.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Ontario, without regard to any provision of such laws that might direct the application of another substantive law to govern this Agreement.

- 11.4 Amendment and Waiver. To be effective, any amendment or waiver under this Agreement must be in writing and be signed by the party against whom enforcement of the same is sought. Neither the failure of any party to exercise any right, power or remedy provided under this Agreement or to insist upon compliance by any other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver by such party of its right to exercise any such right, power or remedy or to demand such compliance.
- 11.5 Entire Agreement. This Agreement constitutes the full understanding of the parties relating to the subject matter hereof and supersedes any and all prior agreements, whether written or oral, that may exist among the parties with respect thereto.
- 11.6 No Third Party Beneficiaries. Unless expressly specified otherwise in this Agreement, no Person not a party to this Agreement shall have rights under this Agreement as a third-party beneficiary or otherwise.
- 11.7 Specific Performance. Each party to this Agreement acknowledges and agrees that the other party would be damaged irreparably in the event any provision of this Agreement is not performed in accordance with its specific terms or otherwise is breached, so that a party shall be entitled to injunctive relief to prevent breaches of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in addition to any other remedy to which such party may be entitled, at law or in equity.
- 11.8 Severability. If any term or other provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been included herein.
- 11.9 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to constitute an original of the same Agreement, and all of which together shall constitute one single Agreement, which shall be effective upon the execution hereof by both parties. A complete set of counterparts shall be made available to each party.
- 11.10 Joint Drafting. The parties hereto have been represented by counsel in the negotiations and preparation of this Agreement; therefore, this Agreement will be deemed to be drafted by each of the parties hereto, and no rule of construction will be invoked respecting the authorship of this Agreement.
- 11.11 Electronic Transmission. This Agreement may be executed by scanned electronic image files attached to email and any such electronic image file shall constitute an original for all purposes.
- 11.12 Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution, and performance of this Agreement and the transactions contemplated herein, including all fees and expenses of its lawyers, consultants and other agents.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Corporation of the Town of Fort Erie

Niagara Transit Commission

Name:
Title:

Name:
Title:

Name:
Title:

Name:
Title:

I/We have authority to bind the Corporation

I/We have authority to bind the Corporation

Appendix A

Summary Term Sheet Municipal Transfer Agreements

The following is the proposed package of terms for the Municipal Transfer Agreements, which will guide the transfer of existing transit assets and personnel to the newly formed Transit Commission (the "Commission"), subject to triple-majority approval, and to be negotiated individually between The Regional Municipality of Niagara and the City of Niagara Falls, City of St. Catharines, and City of Welland respectively.

The principles outlined in this term sheet represent the consensus recommendations of the CAO Governance Steering Committee, reflecting discussion, comments, and input received throughout the multi-year initiative to consolidate transit.

Note that all financial modeling was estimated based on 2020 budgets, assets, and debt levels. The final Financial Strategy will be adjusted prior to 2023 to reflect new assets and debt incurred and will be based on budget levels no less than 2020 operating budgets. Schedule A and B to this term sheet reflect the most recent estimates by municipalities - asset inventories and debt to be assumed by the Commission will be updated and finalized as part of the completion of the full Municipal Transfer Agreements.

Asset Transfer

- 1) Existing local transit assets, including but not limited to bus fleet, service vehicles, service equipment, and transit service facilities purchased or acquired prior to June 30, 2022 will transfer to the Transit Commission at no cost or, for the exclusive use of transit service delivery, in accordance with the Cummings Principle (the transfer of assets from one municipality to another at no additional compensation, because the municipal taxpayer has already paid for them).
 - a. Land on which transit service facilities reside will be retained by the local municipality, and the Region will conduct a Phase 2 environmental assessment.
 - b. Payment-in-lieu of taxes will be provided by the Commission to the local municipality, where applicable.
 - c. Transit service facilities with shared-use municipal components will transfer to the Commission, and be subject to an agreement to lease back at a nominal rate to the municipality those areas of the facility used for non-transit purposes.
 - d. Should the Commission no longer require a transferred asset to exclusively deliver transit services, the ownership of that asset will be transferred back to the original municipality.
- 2) The Commission will commit that existing fleet vehicles delivering local service within a municipality will continue to be utilized exclusively within that municipality for the remainder of their existing service life.
- 3) Local municipalities will make available to the Commission for inspection and condition assessment all transit assets prior to transfer, and will share all related documents related to the assets including information respecting insurance claims. The Commission will be under no obligation to assume assets deemed, at its discretion, to not be in suitable condition for transfer or to not be required to meet the future operational requirements of the Commission. The schedule of assets, specifically the asset count and with the corresponding cost to be transferred by each municipality is included as Schedule A to this document.
- 4) Any ongoing or in-progress capital improvement or acquisition projects will remain the responsibility of the municipality until completed and the asset transferred to Commission only upon completion at zero cost.
- 5) Local municipalities will disclose any agreements entered into related to transit operations in whole or in part, and that will extend beyond December 31, 2022. Copies will be provided to the Region.

Personnel Transfer

- 6) All current full-time, part-time, and union permanent staff, employed directly and fully in transit by local municipalities and hired prior to June 30, 2022, will transfer to the Commission.
- 7) Non-unionized employees will either be directly offered a position with the new Commission where there is anticipated to be a substantially similar role established, or have the opportunity to apply for new roles within the Commission. Where a non-unionized employee does not ultimately transfer to the Commission, they will remain employees of the Municipality in accordance with the Public Sector Labour Relations Transition Act, 1997.
- 8) Those employees whose full-time role with a municipality supports transit work as a only portion of their duties (i.e. corporate support personnel not fully employed in transit) will remain with the municipality.
- 9) The integration of the three existing Amalgamated Transit Unions (ATUs) will take place in accordance with the defined provincial process as outlined under the Public Sector Labour Relations Transition Act, 1997 and by the Ontario Labour Relations Board.

Transit Operations

- 10) The Commission will assume full and exclusive operational responsibility for the delivery of transit on January 1, 2023.
- 11) The Commission will commit to maintain existing local service levels in each municipality, defined as a minimum of the budgeted 2020 local service hours, for a minimum of 7 years or unless otherwise consented to by the municipality.
- 12) The Commission will seek to establish a single common fare as identified in the financial model.
- 13) Municipalities will support the Commission in the placement of on-road transit infrastructure such as transit stops and shelters as required by facilitating their location.

WEGO

- 14) Niagara Region or the Transit Commission will negotiate and enter into an agreement with the Niagara Parks Commission and City of Niagara Falls such that authority for the delivery of the WEGO transit service will remain with the Niagara Parks Commission, in partnership with the City of Niagara Falls.
- 15) WEGO fleet and the WEGO transit facility will remain with the City of Niagara Falls and not be transferred to the Commission, unless otherwise agreed to by the parties as part of any future assumption of WEGO operations by the Commission.
- 16) The Niagara Parks Commission and City of Niagara Falls will continue to provide WEGO service for those routes currently delivered by each agency.
 - a. Transit operators currently employed by the Niagara Parks Commission in the delivery of WEGO service will not transfer to the Commission.
 - b. Transit operators currently employed by the City of Niagara Falls in the joint delivery of Niagara Falls Transit and contracted WEGO routes will transfer to the Commission.
 - c. The Commission and the City of Niagara Falls will enter into a service agreement, on the basis of an hourly fee, for the provision of operators to deliver the continued contracted City of Niagara Falls WEGO routes.

Transitional Period

- 17) A transitional 'steady-state' period will commence on July 1, 2022, beyond which municipalities will commit to make no additional operational, capital, or personnel changes beyond those

previously budgeted, unless otherwise agreed to by the Commission, acting reasonably. This will include:

- a. The continued delivery of transit operations through December 31, 2022, including the maintenance of service levels in place as of June 30, 2022;
 - b. The assumption of additional or unplanned capital expenditures;
 - c. The undertaking of additional debt unless otherwise agreed to and may be subject to a different Municipal allocation than outlined in the Financial Strategy;
 - d. The onboarding of additional non-union or unionized staff; and
 - e. Continued adherence to asset management plans and the state-of-good repair of assets to be transferred to the Commission.
- 18) Assets, personnel, or debt acquired, on-boarded, or assumed by a municipality during this transition period will not transfer to the Commission, unless otherwise agreed to by the parties and the Region of Niagara.

Budgets

- 19) The transit budget associated with the transfer of local operating costs to the Region's twelve special levy model may be offset by equal and concurrent reductions to local Municipal budgets and levies to minimize the residential taxpayer impact from transit consolidation where possible.
- 20) Previously approved intergovernmental funding allocations for capital improvements related to transit will continue to be directed to the identified approved projects and initiatives within the original receiving municipality, until such time as the funding program commitments are satisfactorily met. . This includes any obligation referenced in paragraph 4.
- 21) Debt previously undertaken by municipalities to fund the purchase of transit assets will transfer to the Commission in accordance with Schedule B to this document.
- 22) Any financial assets or liabilities at December 31, 2022 will be accrued by the municipality in accordance with Public Sector Accounting Standards, and other than reserves and debt will remain the responsibility of the municipality at transition.
- 23) The assumption of any costs, operating contracts and debt by the Commission as at the transition date are subject to audit by the Region at the Region's discretion to confirm compliance with transition terms and obligations assumed by the Commission as at January 1, 2023.
- 24) The Municipalities will be responsible to maintain and fund all 2022 operating costs from their 2022 transit operating budgets, inclusive of staff costs, until the Commission establishes its first budget in 2023.
- 25) Municipalities will provide an accurate record of claims history for a period of five (5) years before June, 2022 to assist the Commission in obtaining liability insurance coverage.

Commission Governance

- 26) The Commission must undertake a full governance review by an external third party and report back to Regional Council for decision by 2025. The implementation of the future permanent Board structure will coincide with the 2026 municipal election.
- 27) The Commission will obtain Officers and Director's and all other insurance coverage as soon as it is established.
- 28) The Commission will obtain Officers and Director's and commercial general liability insurance coverage as soon as it is established and all other insurance coverage required for the operation of a transit commission before January 1, 2023. The Commission is authorized to obtain competitive bids by reaching out to the insurers that currently provide coverage to the existing transit operations instead of issuing a Request for Proposals.

- 29) The Commission will appoint a General Manager to oversee the transition and who will report to the Commission Board.

Existing Agreements and Documentation

- 30) Existing agreements between municipal transit agencies and senior levels of government or third-party suppliers or contractors will transfer or be assigned subject to the provision of paragraph 22, to the Commission, subject to the specific requirements of those contracts. Where agreements cannot be assigned or transferred to the Commission, the originating municipality will retain responsibility, subject to adjustment at a later date.
- 31) Responsibility for existing legal claims or legal liabilities, or those initiated or founded in allegations related to the operations by the municipalities prior to the transfer of operational responsibility to the Commission on January 1, 2023 will remain with the municipalities.
- 32) Municipalities will provide and transfer applicable documentation, operating procedures, maintenance records, employee records or other materials necessary for the transition to the Commission.

Negotiation of Agreements and Dispute Resolution

- 33) The parties commit to the negotiation of the full municipal transfer agreements by no later than March 31, 2022.
- 34) Where direct discussion between the Region and municipalities does not satisfactorily resolve any issues, an independent mediator and/or arbitrator will be required to provide dispute resolution services, including binding decisions where agreement cannot be otherwise achieved between the parties. Costs for mediation or arbitration will be split between the Region and municipality.

Schedule 2.1(b)
Vehicles, Buildings, Machinery, Equipment and Furniture

[Transfer of Assets]. Subject to the terms and conditions of this Agreement, at the Closing shall sell, assign, transfer and deliver to the Transit Commission, and the Transit Commission shall purchase and take delivery of, as a going concern with all related goodwill and for the Purchase Price, all of the property and assets exclusively used or held for use in connection with or related to the Business (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situated (collectively, the "**Transferred Assets**"), including:

Vehicles, Machinery, Equipment, Inventory and Furniture. All vehicles, machinery, equipment, fixtures, furniture, furnishings, parts or patterns and other fixed assets used or held for use in its Business, including the machinery, equipment and furniture described in **Schedule 2.1(b)**;

[insert contents]

Schedule 2.1(c)
Prepaid Expenses

Transfer of Assets. Subject to the terms and conditions of this Agreement, at the Closing Fort Erie shall sell, assign, transfer and deliver to the Transit Commission, and the Transit Commission shall purchase and take delivery of, as a going concern with all related goodwill and for the Purchase Price, all of the property and assets exclusively used or held for use in connection with or related to the Business (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situated (collectively, the "Transferred Assets"), including:

Prepaid Expenses. All deposits and prepaid expenses described in Schedule 2.1(c);

[insert contents]

Schedule 2.1(d)
Inventory

N/A

Schedule 2.1(f)
Licenses

N/A

Schedule 2.1(h)
Reserves

Transfer of Assets. Subject to the terms and conditions of this Agreement, at the Closing Fort Erie shall sell, assign, transfer and deliver to the Transit Commission, and the Transit Commission shall purchase and take delivery of, as a going concern with all related goodwill and for the Purchase Price, all of the property and assets exclusively used or held for use in connection with or related to the Business (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situated (collectively, the "Transferred Assets"), including:

Reserves. All reserves and deferred revenue held by Fort Erie in connection with any Transferred Asset or the cash equivalents thereof, as applicable, including any amounts linked to provincial gas tax, development charges, capital, employee future benefits and general operation described in Schedule 2.1(h);

Schedule 2.2(d)
Pending Assets

N/A

Schedule 2.2(e)
In-flight Projects

N/A

Schedule 2.2(m)
Excluded Assets

N/A

Schedule 2.3(d)
Assumed Indebtedness

N/A

Schedule 2.3(e)
Benefits

N/A

Schedule 4.5
Consents

N/A

Schedule 4.6
Real Property Leases

N/A

Schedule 4.10
Actions or Proceedings

N/A

Schedule 4.12(a)
Intellectual Property

N/A

Schedule 4.13
Employees

N/A

Schedule 4.13(d)
Change of Control Payments

N/A

Schedule 4.14
Benefits Plans

N/A

Schedule 4.15
Material Contracts

[Material Contracts. Schedule 4.15 sets forth a list of all currently effective Contracts of Fort Erie in the following categories:

- (a) each Contract with a term that continues past the Closing Date;
- (b) each Contract under which Fort Erie has (i) created, incurred, assumed or guaranteed Indebtedness or created any security interest pursuant to any borrowing, in each case having an outstanding principal amount in excess of \$100,000, or (ii) an obligation to make an investment in or loan to any Person in excess of \$100,000;
- (c) each Contract for the purchase by Fort Erie of goods or services involving total annual payments in excess of 10,000;
- (d) each Contract for the sale by Fort Erie of goods or services involving total annual revenues in excess of \$10,000;
- (e) each Contract containing covenants materially restricting or limiting the freedom of Fort Erie to engage in any line of business;
- (f) each Contract relating to capital expenditures or improvements in excess of \$10,000 in the aggregate;
- (g) each Contract obligating Fort Erie to pay royalties, license fees or similar payments involving amounts in excess of \$10,000 in any consecutive twelve (12) month period;
- (h) each Contract relating to the settlement of any dispute under which Fort Erie has ongoing monetary obligations in excess of \$10,000; and
- (i) each Contract that requires the consent of or notice to a third party for an assignment of the Contract or any similar provision that gives the counterparty the right to terminate or modify such Contract as a result of the transactions contemplated by this Agreement.

With regard to the foregoing:

- (j) Fort Erie has delivered or made available to the Transit Commission true and complete copies of each Contract listed in Schedule 4.15 (each, a "Material Contract");
- (k) Each Material Contract is (A) a valid and binding obligation of Fort Erie and (B) to Fort Erie's Knowledge, a valid and binding obligation of each other party thereto;
- (l) Fort Erie is not in breach of or default under any Material Contract, except where such breach or default would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and
- (m) the consummation of the transactions contemplated by this Agreement will not conflict with or violates any provision of any Material Contract or require the consent of any other party to any such Material Contract.]

[insert contents]