



## MEMO / NOTE DE SERVICE

To / Destinataire	Mayor and Members of Council and Transit Commission	File/N° de fichier:
From / Expéditeur	General Manager, Transportation Services Department	
Subject / Objet	Project Agreement Provisions for Payments to Rideau Transit Group	Date: February 14, 2020

Further to the February 8, 2020 memo (“Payment Memo”), the following memo provides the Mayor and Members of Council and Transit Commission with the specific provisions of the Project Agreement (“PA”) that require the City to make payments to Rideau Transit Group (RTG) in accordance with its contractual obligations, and the City’s rationale for providing payments to RTG in both August and September of 2019.

As described previously, the City is bound by the terms of the PA for all contractual matters with RTG. As such, for each contract month during the maintenance term, the City is obligated under the PA to to pay a Monthly Service Payment to RTG. [Schedule 20, Part B, Section 1.1](#) of the PA provides that “the Monthly Service Payment shall be payable in respect of each Contract Month during the Maintenance Term”. Under [Schedule 20, Part A, Section 1.8](#) of the PA a “Contract Month” is defined as a calendar month. For each Contract Month, RTG issues an invoice for the Monthly Service Payment to the City.

When RTG experiences issues that give rise to various operational failures, under the PA the City is entitled to deductions for those failures. The payment deductions are recorded in a Payment Adjustment Report based on the performance of the system during the Contract Month period. A Payment Adjustment Report is defined under [Section 34.6\(i\)](#) of the PA as a report setting out “any adjustments required between the actual Monthly Service Payments determined by [RTG] to be owing by the City to [RTG] in respect of the Contract Month just ended and the amount that was paid by the City during such Contract Month”. As noted in the Payment Memo, these deductions are designed to be applied one month in arrears.

As per the PA, the maintenance term starts the day after Revenue Service Availability is achieved, which was August 30, 2019. Therefore, the first Contract Month with RTG was August 2019. Under [Schedule 20, Part A, Section 1.8](#) of PA, the first Contract Month is defined as follows:

“The first Contract Month of the Maintenance Term, which runs from the Revenue Service Commencement Date until the end of the calendar month in which such day falls; (and for the avoidance of doubt this shall be Contract Month 1, and all other Contract Months shall

be numbered sequentially from this).”

Therefore, the first contract month consisted of one day, August 31, 2019. As there was no previous Contract Month, the first invoice could not include a Payment Adjustment Report. As noted above, the City’s entitlement to make deductions is tied to a Payment Adjustment Report. As August was the first Contract Month, RTG was not required to deliver a Payment Adjustment Report with its first invoice. Therefore, the City had no entitlement to make deductions from the invoice under the PA. As a result, the City was required to make a full monthly service payment for August 2019.

When the City received an invoice for the second Contract Month (i.e. September 2019), it received the first Payment Adjustment Report which addressed adjustments and deductions to be made for the previous Contract Month (i.e. August 2019). As the System had only been in operation for a single day in August, there were limited deductions to be made.

As a result, in order to ensure that the City complied with its obligations under the PA, the City made a single payment of \$5,155,164.33 for Maintenance Services to RTG on November 15, 2019 for the following:

1. Monthly Service Payment for August 2019 (based on RTG’s pro-rated entitlement for a single day of service because Revenue Service Availability was achieved on August 30, 2019, i.e. August 31, 2019) in the amount of \$165,661.65 inclusive of HST; and,
2. Monthly Service Payment for September 2019 of \$5,003,695.82 less deductions in the amount of \$14,193.14 on the basis of the Maintenance Services performed in August 2019. The total amount paid for September was \$4,989,502.68 inclusive of HST.

If the City does not make payments that it is obligated to make under the PA, RTG may allege that there is a payment default by the City which can lead to serious consequences, including suspension of the performance of the Maintenance Services by RTG. As the City is requiring RTG to comply with its obligations under the PA, the City in turn must also comply with its obligations including the payment provisions.

Outside of the monthly service payments, the City also makes maintenance term payments to RTG for costs unrelated to the maintenance services that cannot be offset by the performance adjustments or deductions mentioned above. These contractual expenditures assumed by the City include the following, for example:

- Operation and Maintenance Insurance Premiums;
- Graffiti Removal Costs; and,
- Station Hydro Costs for the period following Revenue Service Availability.

The City has only made those maintenance payments that it was obligated to do and as noted in the Payment Memo, the City will continue to exercise its rights under the PA to make payment deductions to the fullest extent. The City will continue to hold RTG accountable for its performance failures, in accordance with the PA. Going forward, the City will provide status updates on the maintenance service payments made to RTG as part of the quarterly updates.

Outside of the monthly maintenance service payments, the City has been making payments to RTG for various outstanding capital and cash allowance works, Stage 2 vehicle costs and interface management services, and other costs that are unrelated to the monthly maintenance services. Reporting on these costs is already included in the quarterly updates.

Should you have any questions about the information provided in this memo, please do not hesitate to contact me at extension 52718.

*Original signed by  
John Manconi*

c.c. Senior Leadership Team  
Transportation Services Departmental Leadership Team  
Director, Public Information and Media Relations