



September 24, 2021

Mr. Nicolas Truchon, CEO  
Rideau Transit Group GP  
805 Belfast Road  
Ottawa, ON K1Z 0Z4

Our reference: OTT-RTG-LET-0403

Dear Mr. Truchon:

**RE: Ottawa LRT Project – Project Agreement dated February 12, 2013 (“PA” or “Project Agreement”)<sup>1</sup> between the City of Ottawa (the “City”) and Rideau Transit Group Partnership (“RTG”)**

### **S. 45.1 – Notice of Project Co Event of Default**

The City hereby notifies RTG that Project Co Events of Default have occurred as result of the following recent derailments of Vehicles on the System:

1. The derailment on August 8, 2019 which resulted in the full grounding of the fleet until August 14, 2021 (the “**August Derailment**”); and
2. The derailment, just six weeks later, on September 19, 2021 which has again resulted in a full grounding of the fleet with a return to full service not expected for three weeks by RTG’s Subcontractor Rideau Transit Maintenance (the “**September Derailment**”).<sup>2</sup> (collectively the “**Derailments**”)

### **September Derailment**

To address the most recent derailment first, the City wishes to express, in the strongest possible terms, its shock and disappointment in relation to the September Derailment, which occurred while thirteen System Users were on board, and which clearly raises safety concerns. A train left the tracks west of Tremblay Station when two axles on the train’s second car became dislodged from the rail. The derailment caused significant damage to the train, the track, and a switch box, as is demonstrated by the following images<sup>3</sup>:

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<sup>1</sup> All capitalized terms not defined herein shall bear their meanings as defined in the Project Agreement.

<sup>2</sup> CTV News, Ottawa, September 21, 2021: "Full O-Train service could be shut down for three weeks after LRT train derailment: RTM" (<https://ottawa.ctvnews.ca/full-o-train-service-could-be-shut-down-for-three-weeks-after-lrt-train-derailment-rtm-1.5592357>).

<sup>3</sup> Ottawa Citizen, September 20, 2021: " More LRT problems as train derails; city doesn't think incident related to Aug. 8 derailment" (<https://ottawacitizen.com/news/local-news/apparent-lrt-derailment-near-tremblay-station-r1-bus-service-running>) and CBC, September 19, 2021: " LRT shut down again after 2nd train derailment since August" (<https://www.cbc.ca/news/canada/ottawa/lrt-derailed-west-of-tremblay-1.6181707>).



Given the seriousness of the derailment, Ottawa Fire Services was required to assist with evacuating the System Users and remained at the scene of the derailment to ensure that the train would not require stabilization. Transportation Safety Board ("**TSB**") investigators were also present.

RTG's response to date has been disappointing since the September Derailment, causing the City to seriously question both RTG's commitment and frankly, its capability, to solve its current issues. Just one example is the fact that RTG was more than three hours late at the site, leaving the City and TSB, among others, waiting.

### **August Derailment**

In relation to the August Derailment, an out-of-service train derailed at Tunney's Pasture Station when an axle broke causing the wheel on one of the train cars to derail. RTG has advised that a loose bolt in the axle bearing assembly caused movement within the assembly, which caused damage to the bearings inside the assembly as well as the wheel, which in turn led to the wheel and axle derailing.

This August Derailment occurred over six weeks ago, yet the City still does not have a root cause analysis, has not received adequate responses to its queries, and the fleet had not returned to full reliable service prior to the September Derailment.<sup>4</sup> Rideau Transit Management ("**RTM**") has recently advised that it requires an extension until September 27, 2021 to provide responses to the City's initial questions asked more than a month prior.<sup>5</sup>

The wholly inadequate response to the City's concerns regarding the August Derailment sent by RTG on behalf of RTM attempts to portray the RTG and RTM response as sufficient, when it is clearly not, particularly as RTM acknowledges that its investigation and remedy of the root cause

<sup>4</sup> City Letter dated August 17, 2021 (OTT-RTG-LET-0386) and City Letter Dated August 31, 2021 (OTT-RTG-LET-0388).

<sup>5</sup> RTG letter dated September 10, 2021 (RTG-OTT-00-0-LET-1267), enclosing RTM letter dated September 10, 2021 (RTM-RTG-00-0-LET-0149).



of the August Derailment remains outstanding.<sup>6</sup> For example, to simply forward a response from Alstom that indicates, among other things, that “[m]anagement of track design with respect to all allowable tolerances is the responsibility of OLRTC as track designer” constitutes a completely unacceptable abdication of responsibility by RTG. RTG is intended to be the single point of responsibility and in particular is responsible for all of its Subcontractors including RTM and Alstom.<sup>7</sup> Casting blame on Subcontractors and passing through efforts by Subcontractors to blame other Subcontractors is not going to solve the current issues. To be clear, RTG bears responsibility for all of its Subcontractors. This is RTG’s problem to solve and if RTG continues to abdicate its responsibilities the City will need to take the strongest possible actions under the Project Agreement and at law. At present, the City does not have confidence in RTG’s Subcontractors or RTG’s ability to properly manage and lead an appropriate response to the current serious situation which has safety implications.

### **The Derailments Collectively**

The Derailments have caused severe reputational harm to the City and to the System. The Derailments are affecting ridership and have seriously undermined the public's confidence in the System.<sup>8</sup> RTG does not appear to appreciate the gravity of the current situation given its refusal and/or inability to implement swift and appropriate actions with an adequate level of resourcing.

The fleet remains out of service as of the date of this letter, a fact which is particularly disconcerting given that RTG was to return to operating 15 Revenue Service Vehicles as of August 16, 2021.<sup>9</sup>

Having considered the matter carefully, the City has concluded that the Derailments have resulted in the occurrence of certain new Project Co Events of Default, as described in further detail below. These new Project Co Events of Default are **in addition to** the Project Co Event of Default described in the City’s letter of March 10, 2020, in relation to which RTG has not cured its defaults and continues to be in a state of extended monitoring as described in City Letters.<sup>10</sup>

In particular, the following new Project Co Events of Default (individually each a “**Default**” and collectively the “**Defaults**”) have arisen pursuant to Sections 45.1(a)(v), (x), (xi), and (xii) of the Project Agreement.

#### **1) Default Pursuant to Section 45.1(a)(v) - Unavailability of the System**

The Derailments each separately constitute a serious breach of RTG’s obligations under the Project Agreement. Without limiting the generality of the foregoing, as a result of the Derailments, RTG is in breach of its obligations to:

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<sup>6</sup> RTG Letter dated September 3, 2021 (RTG-OTT-00-0-LET-1260), enclosing RTM Letter dated September 3, 2021 (RTM-RTG-00-0-LET-0143).

<sup>7</sup> Section 9.3, PA.

<sup>8</sup> The City made this concern clear to RTG with respect to the August Derailment in City Letter dated August 16, 2021 (OTT-RTG-LET-0383).

<sup>9</sup> As contemplated pursuant to the Term Sheet for a Temporary Service Level Decrease dated March 10, 2021 and the First Amending Agreement to the Term Sheet dated as of April 23, 2021.

<sup>10</sup> City Letter dated April 1, 2021 (OTT-RTG-LET-0358); City Letter dated August 16, 2021 (OTT-RTG-LET-0383).

- a) provide sufficient Vehicles to meet the required service levels;
- b) rectify issues with the Vehicles and/or System;
- c) perform all activities within the Project Scope so as to satisfy the Output Specifications,<sup>11</sup> in accordance with Good Industry Practice (Works), and in accordance with the terms of the Project Agreement; and
- d) comply with Sections 20.1(a), 20.2, 20.8 and 20.9 of the Project Agreement.

These breaches have had a material adverse effect on the availability of the System to System Users, as they resulted in, among other things:

- a full grounding of the fleet from August 8 until August 14, 2021, and continued subsequent reduction in available Vehicles; and
- a second full grounding of the fleet following the Second Derailment which remains in place as of the date of this letter.

As such, these events constitute Project Co Event of Defaults pursuant to Section 45.1(a)(v) of the Project Agreement.

The Derailments and their significant and ongoing impacts on the availability of the System are the most serious example to date of RTG's egregious failures to ensure that service levels are provided in accordance with the Project Agreement and to provide sufficient Vehicles as required under the Project Agreement. The City has repeatedly cited these failures, including in the City's remedial rights letters dated December 18, 2019 (OTT-RTG-LET-0293) and January 9, 2020 (OTT-RTG-LET-0532), as well as the City's Notice of Project Co Event of Default dated March 10, 2020 (OTT-RTG-LET-0307), which has not been cured or rectified as of the date of this letter.

RTG's breaches of its obligations under the Project Agreement as a result of the Derailments relate not only to the performance of the Maintenance Services, but also to RTG's performance of the Design and Construction Works. Given the breadth of these breaches, the City's confidence in RTG's ability to deliver the Maintenance Services has been seriously eroded.

RTG's failures have in no way been a consequence of a breach by the City of its obligations under the Project Agreement. Accordingly, Defaults have occurred.

Given these Defaults, RTG is required to remedy these breaches, pursuant to Section 45.1(a)(v)(A), by immediately commencing and diligently continuing to remedy its breaches, mitigating any adverse effects on the availability of the System to System Users, providing a reasonable plan and schedule for remedying the breach within **5 Business Days** of receiving notice, and performing its obligations to achieve its plan and schedule within the time for the performance of its obligations under that plan and schedule.

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<sup>11</sup> In relation to the Output Specifications requirements, and by way of example only, see Schedule 15-2 (e.g. Schedule 15-2, Part 4 – Design and Construction Requirements – Vehicles and Systems), and Schedule 15-3 (Maintenance and Rehabilitation Requirements).

## 2) Defaults Pursuant to Sections 45.1(a)(x) to (xii) of the Project Agreement – Failure Points

The accumulation of Failure Points triggers the exercise of important City rights under the Project Agreement if specified thresholds are met, including Project Co Events of Default. As the City has previously noted to RTG, Failure Points discipline performance that is so far below the contracted threshold that financial penalties alone no longer suffice. It is unacceptable to the City that the Failure Points incurred by RTG have yet again far exceeded the Default thresholds set out in s. 45.1(a)(x) to (xii) of the Project Agreement which reference the following thresholds:

- 1,300 or more Failure Points in any three (3) rolling Contract Months
- 1,600 or more Failure Points in any six (6) rolling Contract Months
- 2,000 or more Failure Points in any twelve (12) rolling Contract Months

The Failure Points accrued by RTG in the month of August **alone** exceed the twelve month threshold for Default based on only **two** categories of Failure Points. In particular, as a result of the First Derailment RTG's Failure Points for August 2021 alone as shown in the Integrated Management Information Reporting System ("IMIRS")<sup>12</sup> are:

- 2405 Failure Points for System Events
- 420 Failure Points for Vehicle Availability

Therefore, in relation to these indisputable Failure Points in the month of August 2021 RTG incurred 2825 Failure Points.

Based on these Failure Points, a Default has occurred under each of Section 45.1(a)(x), (xi), and (xii) with regards to the First Derailment.

Moreover, the City expects that the September Failure Points for Vehicle Availability and System Events will be comparable to the extraordinarily high points for August, given that RTM is reported as stating that it may be three weeks before full service resumes.<sup>13</sup> As such, the City fully expects that the Second Derailment will also constitute a default pursuant to Sections 45.1(a)(x) to (xii), and reserves its right to update this Notice of Default after the reporting of the September Failure Points.

Under the Project Agreement, RTG is not entitled to any remedy for this Default as Section 45.4 of the Project Agreement specifically omits Sections 45.1(a)(x) to (xii). However, provided that RTG acknowledges this Default, the City is prepared to allow RTG the same opportunity to provide a plan and schedule to remedy this Default, as with the other Defaults, as described below.

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<sup>12</sup> The IMIRS System is a system that RTG created and monitors.

<sup>13</sup> CTV News, Ottawa, September 21, 2021: "Full O-Train service could be shut down for three weeks after LRT train derailment: RTM" (<https://ottawa.ctvnews.ca/full-o-train-service-could-be-shut-down-for-three-weeks-after-lrt-train-derailment-rtm-1.5592357>).



## **Plan and Schedule to Remedy Defaults**

The City requires that RTG provide a detailed plan and schedule to remedy its Defaults (as described herein) by October 1, 2021. The City will then evaluate that plan and schedule and consider its next steps and, to be clear, the City is investigating all of its options under the Project Agreement and at law and this Notice of Default is not the City's sole remedy in this current situation, as noted below.

The City has been more than patient in allowing RTG time to remedy its outstanding Defaults as set out in the March 10, 2020 Notice of Default. RTG's effort to remedy those Defaults is incomplete, as confirmed by the Mott MacDonald Report dated August 14, 2020.

The City's patience is at an end given the Derailments. On this occasion the City sees no reason to extend the date for RTG to provide a plan and schedule given RTG's past performance and its lack of urgency in addressing pressing issues.

## **Other Remedies**

The other remedies the City will be implementing include:

- Increased monitoring at RTG's expense; and
- Replacement of Key Personnel.

These measures will be addressed under separate cover. In addition, the City is exploring other remedies available to it, including, but not limited to, its remedial rights under Section 32 of the Project Agreement, its remedial rights under Schedule 15-3, and the remedies available to it as lender under the Lending Agreement.

## **City Recovery of Costs**

Pursuant to Section 45.6 the City puts RTG on notice that the City will require RTG to reimburse the City for all reasonable costs (including all legal and professional fees) properly incurred by the City in exercising its rights under Section 45. The City will take commercially reasonable steps to mitigate such costs. Similarly, should the City be required to take any other remedial action, it will also pursue recovery of its costs pursuant to the relevant provisions of the Project Agreement.

Finally, the City requires that RTG keep the City informed of all inspections, investigations and findings in relation to the Derailments, and provide the City with unfettered access to all inspections, investigations and other activities regarding the Derailments.

The City reserves all of its rights under the Project Agreement and at law.



Yours Truly,

A handwritten signature in black ink, appearing to read "M. Morgan".

Michael Morgan  
Director, Rail Construction Program

cc

Lorne Gray, OTC  
Troy Charter, OCT  
Mario Guerra, RTM