

By-law Number 20-2023
of The Regional Municipality of Durham

Being a by-law to authorize the establishment of a Credit Facility and the entering into of a Credit Agreement with the Canada Infrastructure Bank that provides for a loan in the maximum principal amount of \$62,000,000.00 to pay a portion of the purchase price for zero emission buses and to authorize the delegation of authority to pass amending by-laws in respect of this by-law.

Whereas the *Municipal Act, 2001*, as amended (the “Act”) provides that a municipality may incur a debt for municipal purposes, whether by borrowing money or in any other way, and may issue debentures and prescribed financial instruments and enter prescribed financial agreements for or in relation to the debt;

And Whereas subsection 408 (2.1) of the Act provides that a municipality may issue a debenture or other financial instrument for long-term borrowing only to provide financing for a capital work;

And Whereas subsection 408(3) of the Act provides that the term of a debt of a municipality or any debenture or other financial instrument for long-term borrowing issued for it shall not extend beyond the lifetime of the capital work for which the debt was incurred and in any event shall not exceed 40 years;

And Whereas pursuant to subsection 12(1) of O. Reg. 653/05 (the “Regulation”) made under the Act a municipality may enter into a conditional loan agreement with the Canada Infrastructure Bank (“CIB”) for a loan made by the CIB to the municipality for the purpose of long-term borrowing and pursuant to subsection 12 (2) of the Regulation such a loan agreement must include one or more conditions which, if satisfied in accordance with the agreement, would extinguish the requirement for the municipality to repay all or part of the principal and pay all or part of the interest of the debt;

And Whereas subsection 13(1) of the Regulation provides that a conditional loan agreement with the CIB must include certain other conditions which include a requirement to set out: (a) the maximum amount of money available to be borrowed; (b) a fixed rate of interest; and (c) the manner of determining how any amount that is required to be paid by the municipality to the CIB will be calculated, including how instalments will be calculated;

And Whereas Section 14 of the Regulation provides that a conditional loan agreement with the CIB that complies with the conditions of the Regulation is deemed to be a debenture for specified provisions of the Act including subsections 408(2.1), 408(3) and 408(7), clauses 408(4)(a) and (c) and subsections 408(7), 412(2) and 412(4) of the Act; (the “Specified Provisions”);

And Whereas the Specified Provisions provide that a by-law authorizing a conditional loan agreement with the CIB: (i) shall provide for raising in each year as part of the general upper-tier levy, if applicable, the amounts of principal and interest payable in each year under the by-law to the extent that the payments have not been provided by any other taxes or by fees or charges imposed on persons or property by a by-law of any municipality (408(4)(a)); (ii) may provide for instalments of combined principal and interest (408(4)(c)); and (iii) may be amended to provide changes necessary to give effect to the amending by-law (412(2)), in which case the amending by-law does not affect the validity of the original authorizing by-law under which amounts are raised for the repayment of the loan under the conditional loan agreement with the CIB or the power of the Council to continue to levy or collect any instalments;

And Whereas subsection 408(7) of the Act provides that, despite any Act or any difference in the date of issue or maturity, every debenture issued by a municipality (including any conditional loan agreement entered into with the CIB) shall rank concurrently and equally in respect of payment of principal and interest with all other debentures of the municipality;

And Whereas subsection 16(3) of the Regulation provides that a municipality may reduce the amount to be raised for the repayment to the CIB of a loan to the extent that all or part of the principal and interest is no longer required to be repaid or paid, as the case may be, under the terms of the conditional loan agreement with the CIB and in accordance with the provisions of the Act and the Regulation;

And Whereas section 23.1 of the Act authorizes a municipality to delegate its powers and duties under the Act or any other Act to a person or body subject to the restrictions set out in Part II of the Act and that a condition of a delegation of a municipality's powers can be a requirement that the delegate act by by-law;

And Whereas the Council of The Regional Municipality of Durham (the "Region") has authorized as a capital work the purchase from time to time of up to 98 zero emission buses ("ZEBs") as described in Schedule "A" attached hereto and forming part of this By-law ("Schedule "A""), which capital work is hereinafter referred to as the "ZEB Fleet", and the entering into of a Credit Agreement with the CIB in the form of Schedule "B" attached hereto and forming part of this By-law (Schedule "B"), which agreement is hereinafter referred to as the "Credit Agreement". ZEB Fleet means the ZEBs that from time to time will be acquired by the Region using funds loaned to the Region by the CIB pursuant to the Credit Agreement;

And Whereas before authorizing the acquisition of the ZEB Fleet and the entering into of the Credit Agreement, the Council of the Region will have had its Regional Treasurer calculate an updated limit in respect of its most recent annual debt and financial obligation limit received from the Ministry of Municipal Affairs and Housing in accordance with the applicable regulation. Prior to the Council of the Region exercising its powers in respect of the acquisition of the ZEB Fleet and the Credit Agreement, the Regional Treasurer will have determined that the estimated annual amount payable in respect of the acquisition of the ZEB Fleet under the Credit Agreement would not cause the Region to exceed its updated limit and that the approval by the Ontario Land Tribunal of the acquisition of the ZEB Fleet and of the entering into of the Credit Agreement pursuant to such regulation is not required;

And Whereas the Credit Agreement constitutes a conditional loan agreement as that term is defined in the Regulation and complies with the conditions set out in the Regulation;

And Whereas the Region has determined through its annual budget process for 2023 that it will initially acquire 22 ZEBs and that its payment obligations to the CIB in respect of such acquisition will not commence until 2024;

Now therefore, the Council of The Regional Municipality of Durham hereby enacts as follows.

1. The borrowing upon the credit of the Region of a maximum principal amount of \$62,000,000.00 for the acquisition of the ZEB Fleet, the entering into of the Credit Agreement by the Regional Chair and the Regional Clerk and the establishment of the Credit Facility described in the Credit Agreement are hereby authorized. The Regional Chair and the Regional Clerk are hereby authorized to make such amendments to the Credit Agreement as they may hereafter approve and their execution of the Credit Agreement, as amended, constitutes conclusive evidence of their approval. The Credit Agreement shall be sufficiently signed if it bears the Region's municipal seal and each person signing has the authority to do so on the day he or she signs. For greater certainty, the execution, delivery and performance by the Region of the Credit Agreement and the borrowing of funds under the Credit Agreement are hereby authorized.

2. Pursuant to the Credit Agreement the Region will request loans (referred to as "Advances" under the Credit Agreement) from the CIB from time to time to finance, on a long-term basis, the acquisition of additional ZEBs. The number of ZEBs that will be included in any one acquisition that will be funded by an Advance shall be determined by Regional Council through its annual budget process or through amendments to its annual budget process. The Region will be required to satisfy the required conditions set out in the Credit Agreement before each such Advance.
3. Subject to the provisions of the Credit Agreement, the Region shall pay interest on the unpaid principal amount of each Advance from the date of the Advance until said principal is repaid in full at the rate of one percent (1%) per annum calculated daily, payable in arrears on each payment date (and any accrued interest not paid on any payment date shall be added to the principal amount of the Advances outstanding).
4. The manner of determining how any amount that is required to be paid by the Region to the CIB on a Payment Commencement Date for the First Payment and on subsequent Payment Dates as defined in the Credit Agreement (being the last Business Day of March, June, September and December) will be calculated, including how instalments of combined principal and interest will be calculated, is set out in the Credit Agreement. All amounts payable by the Region to the CIB under the terms of the Credit Agreement shall be expressed and payable in lawful money of Canada.
5. In each year in which a payment of an instalment of combined principal and interest becomes due under the Credit Agreement, including a First Payment as defined in the Credit Agreement, there shall be raised as part of the general upper-tier levy the amounts of principal and interest calculated to be payable in each calendar year in accordance with the Credit Agreement to the extent that the amounts have not been provided for by any other available source, including other taxes or fees or charges imposed on persons or property by a by-law of any municipality. For the purpose of the first calendar year of the Credit Agreement it is anticipated that the Region will not borrow from the CIB under the Credit Agreement for the acquisition of any ZEBs. However, for the second calendar year it is anticipated that the Region will borrow from the CIB under the Credit Agreement for the acquisition of 22 ZEBs, being the first ZEB acquisition, a maximum principal amount of \$12,665,518.00 and that there shall accordingly be raised as part of the general upper-tier levy, commencing in 2025, the maximum amounts of principal and interest calculated to be payable in each year to the applicable Maturity Date, including the First Payment, (as both terms are defined in the Credit Agreement) as set out in Schedule C-1, attached hereto and forming part of this By-law, to the extent that the amounts have not been provided for by any other available source including other taxes or fees or charges imposed on persons or property by a by-law of any municipality.
6. Without limiting the generality of the foregoing, this By-law may be amended from time to time to add additional Schedules "C" (identified sequentially as "C-2", C-3" etc, as appropriate) for additions to the ZEB Fleet in respect of which additional Advances will be made by the CIB to the Region on the basis that each additional Schedule "C" will set out the maximum instalments of combined principal and interest payable in each year to the applicable Maturity Date for the relevant additional Advance, including the First Payment (as both terms are defined in the Credit Agreement). As a matter of clarification, the payments of instalments of combined principal and interest in respect of the second Advance to the applicable Maturity Date, including the First Payment (as both terms are defined in the Credit Agreement), shall be made by the Region on the Payment Dates as set out in an additional Schedule "C-2" to the extent that the amounts have not been provided for by any other available source including other taxes or fees or charges imposed on persons or property by a by-law of any municipality.

7. Pursuant to the authority contained in section 23.1 and subsection 412(2) of the Act the Region hereby delegates to the Regional Treasurer, in consultation with the Regional Clerk, the authority to amend this By-law by attaching additional Schedules "C", commencing with Schedule "C-2" for the acquisition of additional ZEBs in respect of which additional Advances will be made by the CIB to the Region in accordance with the Credit Agreement. In attaching additional Schedules "C" the Regional Treasurer is required to act by by-law, which by-law in each case shall constitute an amending by-law in accordance with subsection 412 (2) of the Act. The procedures that the Regional Treasurer is required to follow when acting by amending by-law to attach additional Schedules "C" shall be determined by the Regional Treasurer, in consultation with the Regional Clerk. When the Regional Treasurer has attached an additional Schedule "C" pursuant to an amending by-law, the Regional Treasurer shall report the terms of any such additional Schedule "C" to Regional Council for information once every calendar year for the Regional Council's information.
8. The delegation to the Regional Treasurer pursuant to this By-law shall not be revoked prior to the end of the term of the current Regional Council at which time such delegation may be revoked. Unless and until the delegation is revoked it remains in full force and effect. Every amending by-law enacted by the Regional Treasurer pursuant to this By-law shall be signed by the Regional Treasurer. The corporate seal shall be affixed to the amending by-law and it shall be numbered, dated and deposited in the office of the Regional Clerk by the Regional Clerk.
9. An amending by-law passed in accordance with section 7 of this By-law and with subsection 412(4) of the Act does not affect the validity of this By-law and particularly section 5 of this By-law under which section amounts of principal and interest, including amounts of combined principal and interest, are raised for the repayment of Advances under the Credit Agreement and such an amending by-law does not affect the power of the Regional Council to continue to levy or collect any instalments or other amounts including instalments of combined principal and interest under the Credit Agreement payable by the Region to the CIB under this By-law, as it may be amended from time to time.
10. (1) The Regional Treasurer is hereby authorized to generally do all things and to execute all other documents and papers in the name of the Region in order to carry out the long-term borrowing under the Credit Agreement including, without limiting the generality of the foregoing, all reports, Drawdown Notices, Funding Supplements and Compliance Certificates that the Region is required to provide to the CIB under the Credit Agreement, and the Regional Treasurer or the Regional Clerk is authorized to affix the Region's municipal seal to any of such documents and papers.

(2) The money received by the Region from the CIB, and any earnings derived from the investment of that money, shall be apportioned and applied to the ZEB Fleet in accordance with this By-law, the Act, the Regulation and the Credit Agreement, and to no other purpose except as permitted by this By-law, the Act, the Regulation and the Credit Agreement.
11. This By-law comes into force and takes effect on the date of its final passing.

This By-law Read and Passed on the 29th day of March, 2023.

J. Henry, Regional Chair and CEO

A. Harras, Regional Clerk

**SCHEDULE "A" TO BY-LAW NUMBER 20-2023
OF
THE REGIONAL MUNICIPALITY OF DURHAM**

The capital work authorized pursuant to this By-law means the purchase by the Region of up to 98 ZEBs which will comprise the ZEB Fleet for the purpose of the Credit Agreement by the end of the Availability Period and includes the related capital costs in respect of the arrangements described in recital B to the Credit Agreement and, without limiting the generality of the foregoing, the following capital costs related to the 22 ZEBs are included in such capital work:

Class 1 ZEB – 40 foot – Quantity 22 – Total Cost \$33,800,000 - CIB Portion - \$12,665,518.

**SCHEDULE “B” TO BY-LAW NUMBER 20-2023
OF
THE REGIONAL MUNICIPALITY OF DURHAM**

**\$62,000,000
CREDIT FACILITY**

**THE REGIONAL MUNICIPALITY OF DURHAM
AS BORROWER,**

- and -

**THE CANADA INFRASTRUCTURE BANK
AND THE OTHER LENDERS FROM TIME TO TIME PARTIES HERETO,
AS LENDERS,**

- and -

**THE CANADA INFRASTRUCTURE BANK,
AS AGENT**

CREDIT AGREEMENT

March 31, 2023

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION	2
1.1 Defined Terms and Other Interpretation Provisions	2
ARTICLE 2 CREDIT FACILITY	2
2.1 Availability	2
2.2 Commitments and Facility Limits	3
2.3 Use of Proceeds	3
2.4 Extension of Maturity Date	3
2.5 Reliance on Instructions	4
ARTICLE 3 ADVANCES	4
3.1 The Advances	4
3.2 Procedure for Advances	4
3.3 Interest	5
3.4 Determination Final	5
ARTICLE 4 REPAYMENT OBLIGATIONS	5
4.1 Mandatory Repayments	5
4.2 Mandatory Prepayments	7
4.3 Limitations on the Borrower's Repayment Obligations	8
4.4 Payments under this Agreement	8
4.5 Application of Payments and Prepayments	9
4.6 Computation of Interest	9
4.7 Evidence of Indebtedness	10
ARTICLE 5 CONDITIONS OF LENDING	11
5.1 Closing Date Deliverables	11
5.2 Conditions Precedent to Initial Advances and to Initial Advances Following Each Subsequent Financial Close for Additional Purchases	12
5.3 Conditions Precedent to All Advances	14
5.4 No Waiver	14
ARTICLE 6 REPRESENTATIONS AND WARRANTIES	15
6.1 Representations and Warranties	15

6.2	Survival of Representations and Warranties	18
ARTICLE 7 COVENANTS OF THE BORROWER		18
7.1	Affirmative Covenants	18
7.2	Negative Covenants	22
7.3	Integrity Provisions	23
7.4	Lifecycle Reserve Account	25
ARTICLE 8 EVENTS OF DEFAULT		25
8.1	Events of Default	25
8.2	Acceleration and Termination of Rights	28
8.3	Remedies Cumulative	29
8.4	Continuance of Event of Default	29
ARTICLE 9 MATTERS RELATING TO LENDERS		29
9.1	Illegality	29
9.2	Sharing Among the Lenders	30
ARTICLE 10 AGENCY		30
10.1	Appointment and Authority	30
10.2	Rights as a Lender	30
10.3	Exculpatory Provisions	30
10.4	Reliance by Agent	31
10.5	Indemnification of Agent	31
10.6	Delegation of Duties	32
10.7	Replacement of Agent	32
10.8	Non-Reliance on Agent and Other Lenders	33
10.9	Collective Action of the Lenders	33
10.10	Borrower's Right to Rely on Agent	33
10.11	No Partnership	34
ARTICLE 11 NOTICES: EFFECTIVENESS; ELECTRONIC COMMUNICATION		34
11.1	Notices	34
11.2	Electronic Communications	34
11.3	Change of Address, etc.	35

ARTICLE 12 SUCCESSORS AND ASSIGNS	35
12.1 Successors and Assigns	35
12.2 Assignments by Lenders	36
12.3 Register	36
12.4 Participations.....	36
ARTICLE 13 TREATMENT OF CERTAIN INFORMATION: CONFIDENTIALITY AND COMMUNICATIONS PROTOCOL	37
13.1 Treatment of Certain Information: Confidentiality.....	37
13.2 Treatment of Certain Information: Communications Protocol.....	38
13.3 Access to Information Act.....	38
ARTICLE 14 MISCELLANEOUS	39
14.1 Anti-Money Laundering Legislation.....	39
14.2 Dispute Resolution Procedures	40
14.3 Amendments and Waivers.....	40
14.4 Costs and Expenses.....	41
14.5 Entire Agreement	41
14.6 Time of Essence.....	41
14.7 Governing Law and Submission to Jurisdiction.....	41
14.8 Severability.....	42
14.9 Conflicts	42
14.10 Counterparts.....	42
14.11 English Language.....	43
14.12 Further Assurances	43
Schedule A Interpretation.....	46
Schedule B Form of Drawdown Notice.....	63
Schedule C Form of Funding Supplement.....	65
Schedule D Form of Compliance Certificate.....	69
Schedule E Assignment and Assumption.....	70
Schedule F Additional Reporting and Disclosure Obligations	74
Schedule G Communications Protocol.....	77
Schedule H Dispute Resolution Procedures.....	78
Schedule I Eligible Maintenance Costs	82

Schedule J Certain Eligible Assignees and Permitted Participants.....	84
Schedule K Baseline Assumptions.....	85

CREDIT AGREEMENT

THIS CREDIT AGREEMENT made as of the 31st day of March, 2023.

BETWEEN:

**THE REGIONAL MUNICIPALITY OF
DURHAM,**

an upper-tier municipality existing under the
Municipal Act, 2001,

(hereinafter referred to as the “**Borrower**”)

- and -

CANADA INFRASTRUCTURE BANK,

a corporation established pursuant to the *Canada
Infrastructure Bank Act*, as Lender

(hereinafter, in such capacity, referred to as the
“**CIB**”)

- and -

**THE OTHER LENDERS FROM TIME TO TIME
PARTIES HERETO,**

as Lenders

(collectively with the CIB, hereinafter referred to as
the “**Lenders**”, and any of them, a “**Lender**”)

- and -

CANADA INFRASTRUCTURE BANK,

as Agent

(hereinafter, in such capacity, referred to as the
“**Agent**”)

BACKGROUND

- A. The CIB is a federal Crown corporation with a mandate that includes working with federal, provincial, territorial, municipal and Indigenous sponsors and private sector investors to explore innovative approaches to financing and delivering infrastructure projects in Canada that are in the public interest. The CIB has developed a ZEB financing program with the objective of catalyzing and accelerating ZEB adoption across Canada.

- B. The Borrower, through Durham Region Transit, provides public transportation across Durham Region, including in the municipalities of Ajax, Brock, Clarington, Oshawa, Pickering, Scugog, Uxbridge and Whitby, and intends to replace some of the GHG Buses being operated by Durham Region Transit with ZEBs. For purposes of this Agreement, the ZEB Fleet will consist of approximately 98 ZEBs.
- C. The Borrower wishes to obtain financing to pay a portion of the ZEB Acquisition Costs (being the Funded ZEB Acquisition Costs) for each ZEB that will form part of the ZEB Fleet. Pursuant to its ZEB financing program, the CIB has agreed to provide such financing to the Borrower on the terms specified herein in furtherance of the Project.

IN CONSIDERATION of the foregoing, the mutual covenants set out herein, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms and Other Interpretation Provisions

Schedule A sets forth provisions that relate to the interpretation of this Agreement and includes certain defined terms that are used in this Agreement and the other Schedules that are attached hereto, all of which Schedules are incorporated into, and form part of, this Agreement.

ARTICLE 2 CREDIT FACILITY

2.1 Availability

(a) The CIB agrees, on the terms and conditions of this Agreement, to make the Credit Facility available to the Borrower during the Availability Period.

(b) The Availability Period may be extended by the mutual agreement of the CIB and the Borrower. Notwithstanding the foregoing, if the Borrower cannot acquire or take possession of a ZEB before the end of the Availability Period for any reason beyond the control of the Borrower, the Availability Period shall be extended to a date by which the Borrower is able to do so (such extension, the "**Triggered Availability Period Extension**"); provided, however, that:

- (i) the Triggered Availability Period Extension will not be for a duration longer than one year without the prior written consent of the CIB in its sole discretion, and in no case will the Triggered Availability Period Extension be for a duration longer than two years;
- (ii) the occurrence of any event, condition or circumstance (and the effect or consequence thereof) that arises out of or results from any of the following events or circumstances shall not give rise to a Triggered Availability Period Extension:

- (A) the inability of the Borrower to obtain financing or any other financial inability on the part of the Borrower;
 - (B) the inability of the Borrower to acquire or take possession of the ZEBs before the end of the Availability Period is the result of increases in any expenses relating to the acquisition or taking possession of the ZEBs;
 - (C) any wilful misconduct, intentional breach of contract, dealing in bad faith or fraud by the Borrower;
 - (D) any strike or other labour disruption involving persons employed by the Borrower; or
 - (E) any change in Applicable Law; and
- (iii) no Triggered Availability Period Extension will occur if, at the time that the Triggered Availability Period Extension would commence, a Default or an Event of Default has occurred and is continuing.

2.2 Commitments and Facility Limits

- (a) The Loans under the Credit Facility shall not, at any time, exceed the Credit Commitment.
- (b) The unused portion of the Credit Commitment shall be permanently cancelled as of noon (Toronto time) on the last day of the Availability Period, and the Credit Commitment shall be permanently reduced by the amount by which the Loans under the Credit Facility on such date are less than the Credit Commitment on such date.

2.3 Use of Proceeds

The Borrower shall use the proceeds of each Advance under the Credit Facility solely to fund the Funded ZEB Acquisition Costs of ZEBs being purchased by the Borrower in connection with the Project (the “**Permitted Use**”), and not for any other purpose.

2.4 Extension of Maturity Date

At any time at least thirty (30) days prior to the Maturity Date, the Majority Lenders may, by notice to the Borrower, the Agent and the other Lenders, extend the Maturity Date if the Majority Lenders determine that there will be Obligations owing under the Credit Facility as of the stated Maturity Date and, with the advice of the Technical Advisor, that some or all of the ZEBs in the ZEB Fleet will continue to have a useful life beyond the stated Maturity Date (each such ZEB, an “**Extended Life ZEB**”) and that the Borrower is likely to achieve Actual Savings during such period (without any adjustments to the Estimated Eligible ZEBs Costs, the Prorated GHG Bus Fuel Costs and the Prorated GHG Bus Maintenance Costs that are in effect as of the Maturity Date stated herein, unless otherwise agreed to by the Majority Lenders (with advice from the Technical Advisor and the Borrower). If the Maturity Date is so extended, then:

- (a) for so long as the Borrower continues to Operate the Extended Life ZEB, it shall make required payments on each Payment Date until the earlier of: (i) the Maturity Date (as extended pursuant to this Section 2.4), or (ii) the day on which there are no Obligations owing by the Borrower to the Lenders under the Credit Facility; or
- (b) the Borrower may elect by notice to the Agent to cease Operating the Extended Life ZEB, in which case:
 - (i) for so long as the Borrower does not Operate or permit the Operation of the Extended Life ZEB or Dispose of the Extended Life ZEB, the Borrower shall not be required to make further payments hereunder in respect of such ZEB; and
 - (ii) if the Borrower Disposes of the Extended Life ZEB prior to the date that is the earlier of (A) the Maturity Date (as extended pursuant to this Section 2.4) or (B) the day on which there are no Obligations owing by the Borrower to the Lenders under the Credit Facility, then notwithstanding anything to the contrary in Section 4.2(a), the Borrower shall pay to the Lenders on the next Payment Date on account of the Obligations an amount equal to the lesser of the (A) the Advances Outstanding Per ZEB in respect of such Extended Life ZEB, together with the interest accrued on such amount calculated in accordance with Section 3.3, and (B) the Net Proceeds from the Disposition of such Extended Life ZEB.

2.5 Reliance on Instructions

The Agent shall be entitled to rely upon any writing, letter, notice, certificate, email, PDF document, facsimile, statement, order or other document by or on behalf of the Borrower believed by the Agent to be genuine and correct and to have been signed, sent or made by the proper Person or Persons. The Borrower shall indemnify the Agent and each Lender for any loss or expense suffered or incurred by the Agent or the Lender as a consequence of the Agent or the Lender acting upon instructions given or agreements made by any recordable means (including by electronic transmission) of any type with Persons reasonably believed by the Agent or the Lender to have been acting on the Borrower's behalf.

ARTICLE 3 ADVANCES

3.1 The Advances

The CIB agrees, on the terms and conditions of this Agreement, to make Advances to the Borrower under the Credit Facility in multiple Drawdowns during the Availability Period. Subject to satisfaction of the conditions specified herein, each Drawdown will be made on a Drawdown Date on which the Borrower has duly requested that an Advance be made.

3.2 Procedure for Advances

(a) Each Advance shall be made on ten (10) Business Days' prior notice, given not later than 11:00 a.m. (Toronto time) by the Borrower to the CIB. Each such notice shall be

substantially in the form of a Drawdown Notice and shall be irrevocable and binding on the Borrower once given by it to the CIB. Each Advance shall be subject to the satisfaction of the conditions specified in Article 5.

(b) Upon fulfilment of the applicable conditions specified in Article 5, the CIB will make funds available to the Borrower in accordance with Article 2.

3.3 Interest

The Borrower shall pay interest on the unpaid principal amount of each Advance made to it, from the date of such Advance until such principal amount is repaid in full, at the rate of one percent (1%) per annum, calculated daily and payable in arrears on each Payment Date, on each prepayment of principal on account of Advances Outstanding and when such Advance becomes due and payable in full pursuant to the provisions of this Agreement. Any accrued interest not paid on any Payment Date shall be added to the principal amount of Advances Outstanding commencing on such Payment Date.

3.4 Determination Final

With respect to all matters referred to in this Article 3, including the calculation of interest, the determination by the Agent shall be final, conclusive and binding on the Borrower and the Lenders, absent manifest error.

ARTICLE 4 REPAYMENT OBLIGATIONS

4.1 Mandatory Repayments

(a) The Borrower shall repay the Advances Outstanding and shall satisfy all other Obligations in accordance with this Section 4.1.

(b) Except in the circumstances specified in Section 4.2, the Borrower shall not be required to make any payments in respect of the Advances Outstanding or interest accrued thereon until the applicable Payment Commencement Date has occurred.

(c) **First Payment.** On the first Payment Date that occurs on or following a Payment Commencement Date (the "**First Payment Date**"), the Borrower shall pay to the Lenders, as a partial repayment of the corresponding Advances Outstanding, an amount equal to the lesser of:

- (i) the Aggregate Forecast Savings for the ZEB Fleet during the period that commenced on the applicable Financial Close and ended on such Payment Commencement Date; and
- (ii) the Aggregate Actual Savings for the ZEB Fleet during the same period described in clause (i) above,

provided, however, that in no event shall such payment be less than \$0, and in no event shall the CIB be required to make a payment to the Borrower if the foregoing calculations result in amounts less than \$0. For greater certainty, if more than one Financial Close occurs, there will

be a separate Payment Commencement Date in respect of the Additional ZEBs that are the subject of each Additional Purchase, and in such circumstances, the Forecast Savings and the Actual Savings relating to the Additional ZEBs that are the subject of an Additional Purchase will not be included in the calculation of the Aggregate Forecast Savings or the Aggregate Actual Savings in respect of those ZEBs that were purchased by the Borrower in connection with any previous Financial Close for any purpose under this Agreement until the next Payment Date (and thereafter) that follows the First Payment Date in respect of such Additional ZEBs. In connection with each Payment Commencement Date for Additional ZEBs, only the Aggregate Forecast Savings and the Aggregate Actual Savings relating to such Additional ZEBs will be included in the applicable First Payment Date calculation.

(d) **Subsequent Payments.** On each Payment Date that follows a First Payment Date, the Borrower shall pay to the Lenders, as a partial repayment of the corresponding Advances Outstanding (in respect of which a First Payment Date has occurred), an amount (the “**Quarterly Payment Amount**”) equal to the lesser of:

(i) the amount equal to the sum of (A) + (B) + (C), where:

(A) is the Forecast Savings during the immediately preceding calendar quarter which ended prior to the applicable Payment Date (the “**Quarterly Payment Period**”);

(B) is the Deferred Savings Amounts as of the beginning of the Quarterly Payment Period; and

(C) is the amount of interest accrued on the Deferred Savings Amounts referred to in (B), with such interest calculated to the end of the Quarterly Payment Period; and

(ii) the amount equal to the sum of (A) + (B), where:

(A) is the Actual Savings during the Quarterly Payment Period; and

(B) is the Net Borrower Savings as of the beginning of the Quarterly Payment Period,

provided, however, that in no event shall the Quarterly Payment Amount be less than \$0, and in no event shall the CIB be required to make a payment to the Borrower in respect of a negative Quarterly Payment Amount.

(e) **Maturity Date.** On the Maturity Date, the Borrower shall repay to the Lenders an amount equal to the lesser of (i) the Obligations owing as of such date, or (ii) the sum of the Net Borrower Savings plus the Lifecycle Reserve Account Funds as of such date. Subject to the foregoing, the Lenders shall have no recourse against the Borrower if there are Obligations owing at the end of the Term in excess of the amount referred to in clause (ii) above (and, for the avoidance of doubt, for purposes of Section 12(2) of Ontario Regulation 653/05 – *Debt-Related Financial Instruments and Financial Agreements* made under the *Municipal Act, 2001* (Ontario)), such circumstances will extinguish the requirement for the Borrower to repay the amount of such excess to the Lenders, except to the extent that the Borrower shall have failed to make any payment of principal, interest or other payment due pursuant to this Agreement

when due, in which case the Lenders shall continue to have all of their rights and remedies under this Agreement with respect to such principal, interest or other payment, including any such payments due on the Maturity Date.

4.2 Mandatory Prepayments

(a) **Disposition of ZEBs.** Subject to Section 7.1(m) and the last sentence in this Section 4.2(a), during the Term, if the Borrower Disposes of any ZEB (other than an Extended Life ZEB, to which Section 2.4 applies), the Borrower shall repay to the Lenders on account of the Obligations, an amount (the "**Disposition Amount**") equal to the Advances Outstanding Per ZEB in respect of such Disposed ZEB, together with the interest accrued on such amount calculated in accordance with Section 3.3, unless the Borrower replaces such Disposed ZEB with a ZEB of the same class and in the same or better condition within twelve (12) months following the date on which the Disposition was completed and such replacement ZEB will be included in the ZEB Fleet for purposes of this Agreement. The Borrower shall repay the Obligations in the amount of the Disposition Amount on the next Payment Date that follows the date that is six (6) months after such Disposition has been completed. Notwithstanding anything to the contrary in this Section 4.2(a), the Borrower shall not be required to pay the Disposition Amount in respect of any Disposed ZEB that is past its useful life as contemplated in the applicable Funding Supplement (any such ZEB, a "**Retired ZEB**") unless the Deferred Savings Amount is greater than zero, and if the Deferred Savings Amount is greater than zero, then the Disposition Amount in respect of the Retired ZEB will not exceed the Deferred Savings Amount.

(b) **Insurance Proceeds.** During the Term, following the receipt of proceeds under any insurance policy by the Borrower as a result of damage to, or the destruction or other loss of, a ZEB in the ZEB Fleet, the Borrower shall repay to the Lenders, on account of the Obligations, an amount (the "**Insurance Payment**") equal to the lesser of: (i) the Advances Outstanding Per ZEB in respect of such damaged, destroyed or otherwise lost ZEB that gives rise to such insurance proceeds, together with the interest accrued on such amount calculated in accordance with Section 3.3, or (ii) 100% of the Net Proceeds of the insurance maintained by or for the benefit of the Borrower in respect of the ZEB Fleet; unless, in each case (clause (i) or (ii)), the Borrower (A) repairs such damaged ZEB within twelve (12) months following the date on which the Borrower receives such insurance proceeds so that it is the same or better condition as it was in prior to the occurrence of such damage thereto (the "**Repair Option**"), or (B) replaces such damaged, destroyed or lost ZEB with a ZEB of the same class that is in the same or better condition as such damaged, destroyed or lost ZEB was in prior to the occurrence of such damage, destruction or other loss within twelve (12) months following the date on which the Borrower receives such insurance proceeds (the "**Replacement Option**"). The Borrower shall repay the Advances Outstanding and interest accrued thereon in the amount of the Insurance Payment on the next Payment Date that follows the date that is twelve (12) months after the date on which the Borrower receives the Net Proceeds of insurance unless the Borrower has satisfied the Repair Option or, at the end of such twelve (12) month period, the Borrower demonstrates to the satisfaction of the Agent that it is making good faith efforts to satisfy the Replacement Option, in which case such payment shall not be due until the date that is twelve (12) months after the date on which the Borrower receives the Net Proceeds of insurance; and, for certainty, provided further that no such payment will be due if the Borrower satisfies the Replacement Option.

Notwithstanding the foregoing, if the Borrower self-insures and there occurs any damage to, or the destruction or other loss of, a ZEB in the ZEB Fleet, the Borrower shall repay to the

Lenders, on account of the Obligations, an amount equal to the Insurance Payment in accordance with, and subject to, the foregoing provisions of this Section 4.2(b), as if the Insurance Payment comprised proceeds received under an insurance policy.

- (c) **Cancelled ZEBs.** If the Borrower determines not to, or is unable to:
- (i) complete the purchase, or take possession, of one or more ZEBs reflected in the Financial Model within three (3) months following the Borrower's acceptance of an Advance for some or all of the Funded ZEB Acquisition Costs of such ZEB or ZEBs (including if the Borrower purchases a different class of ZEB than the class reflected in the Financial Model);
 - (ii) comply with its obligations under Section 7.1(d)(i) to conduct a pre-delivery inspection of any ZEB that is part of the ZEB Fleet prior to Operating such ZEB, or to rectify, or cause to be rectified, any issues identified during such pre-delivery inspection; or
 - (iii) commence Operating one or more ZEBs for any reason other than an Excusing Cause within two (2) months following the date on which the Borrower takes possession of such ZEB or ZEBs,

(the applicable ZEBs in clauses (i), (ii), and (iii), the "**Cancelled ZEBs**"), in each case, while there are Advances Outstanding that were used by the Borrower to pay the Funded ZEB Acquisition Costs specified in the applicable Funding Supplement for the acquisition of the Cancelled ZEBs, then on the first Payment Date that follows the occurrence of the events described in clauses (i), (ii) or (iii), the Borrower shall repay to the Lenders, on account of the Obligations, an amount equal to the Funded ZEB Acquisition Costs for the Cancelled ZEBs, together with the interest accrued on such amount calculated in accordance with Section 3.3 (the "**Cancellation Payment**").

(d) **Event of Default.** Upon the occurrence of an Event of Default, all Obligations shall be immediately due and payable and, subject to Section 8.2(c), the Borrower shall immediately repay all such Obligations.

(e) **Reporting Default.** If the Borrower fails to perform, observe or comply with the reporting and disclosure obligation listed in item 2(e) of Schedule F, the Borrower shall immediately repay an amount equal to the Deferred Savings Amount as of the end of the immediately preceding Financial Quarter.

4.3 Limitations on the Borrower's Repayment Obligations

The Borrower shall not be required to make any payments in respect of the Advances Outstanding until the applicable Payment Commencement Date has occurred, other than the payments contemplated in Section 4.2.

4.4 Payments under this Agreement

(a) Unless otherwise expressly provided in this Agreement, the Borrower shall make any payment required to be made by it under this Agreement to the Agent or any Lender by

depositing the amount of the payment to the Agent's Account not later than 11:00 a.m. (Toronto time) on the date the payment is due. The Borrower shall make each such payment in Canadian Dollars. The Agent shall distribute to each applicable Lender, within one (1) Business Day following the date of receipt by the Agent of any payment (such following Business Day, the "**Distribution Date**"), an amount equal to the amount then due to each such Lender; provided, however, that if such distribution is not made prior to or on the Distribution Date as a result of the wilful misconduct or gross negligence by the Agent, the Agent shall pay interest on the amount for each day, from the Distribution Date until the actual date of distribution, at the prevailing interbank rate for late payments.

(b) Unless otherwise expressly provided in this Agreement, the Agent shall make Advances under the Credit Facility and other payments to the Borrower under this Agreement by depositing or causing to be deposited the amount thereof in the Borrower's Canadian Dollar account, the details of which the Borrower will include in a notice to the CIB, by not later than 1:00 p.m. (Toronto time) on the date the payment is to be made.

(c) Any payment made by the Borrower to the Agent in accordance with Section 4.4(a) shall be deemed for all purposes hereunder and under the other Credit Documents to be a payment made by the Borrower to the requisite payee hereunder or thereunder and the obligation of the Borrower with respect to the making of such payments shall be deemed to be fully satisfied and discharged upon payment of such requisite amounts to the Agent.

4.5 Application of Payments and Prepayments

All amounts received by the Agent from or on behalf of the Borrower and not otherwise required to be applied pursuant to this Agreement shall be applied by the Agent as follows:

- (a) first, in reduction of the Borrower's obligation to pay any accrued and unpaid interest which is due and owing;
- (b) second, in reduction of the Borrower's obligation to pay any amounts due and owing on account of any unpaid principal amount of the Advances Outstanding which are due and owing;
- (c) third, in reduction of any other Obligations of the Borrower under this Agreement and the other Credit Documents; and
- (d) fourth, to the Borrower.

4.6 Computation of Interest

(a) All computations of interest shall be made by the Agent taking into account the actual number of days occurring in the period for which such interest is payable pursuant to Section 3.3, and a year of 365 days or 366 days, as the case may be. In calculating interest payable under this Agreement or any other Credit Document for any period of time, the first day of such period will be included and the last day of such period will not be included.

(b) For the purposes of this Agreement, whenever interest is to be calculated on the basis of a period of time other than a calendar year, the annual rate of interest to which each rate of interest determined pursuant to such calculation is equivalent for the purposes of the *Interest Act* (Canada) is such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days used in the basis of such determination.

(c) The parties acknowledge and agree that all calculations of interest under the Credit Documents are to be made on the basis of the nominal interest rate described herein and not on the basis of effective yearly rates or on any other basis which gives effect to the principle of deemed reinvestment of interest. The parties acknowledge that there is a material difference between the stated nominal interest rates and the effective yearly rates of interest and that they are capable of making the calculations required to determine such effective yearly rates of interest.

(d) The Borrower hereby irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to the Credit Documents, that the interest payable under the Credit Documents and the calculation thereof has not been adequately disclosed to the Borrower, whether pursuant to Section 4 of the *Interest Act* (Canada) or any other Applicable Law or legal principle.

(e) If any provision of this Agreement would obligate the Borrower to make any payment of interest or other amount payable to a Lender in an amount or calculated at a rate which would be prohibited by Applicable Law or would result in a receipt by a Lender of interest or yield at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect for the applicable period to the maximum amount or rate of interest or yield, as the case may be, as would be permissible by Applicable Law or would not result in a receipt by such Lender of interest or yield at a criminal rate, such adjustment to be effected, to the extent necessary, if any, as follows: (i) firstly, by reducing the amount or rate of interest required to be paid to the Lender hereunder; and (ii) thereafter, by reducing any fees and other amounts required to be paid to the Lender hereunder which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada).

4.7 Evidence of Indebtedness

The Agent shall open and maintain in accordance with its usual practice books of account evidencing all Advances and all other amounts owing by the Borrower to the Agent and the Lenders pursuant to this Agreement. The Agent shall enter in the foregoing accounts details of each Advance, every Drawdown Date and of all amounts from time to time owing or paid by the Borrower to the Agent on its own behalf or on behalf of the Lenders pursuant to this Agreement, the amounts of principal and interest payable from time to time hereunder and, in respect of the Credit Facility, the unused portion of the Credit Commitment available to be drawn down by the Borrower. The information entered in the foregoing accounts shall constitute, in the absence of manifest error, conclusive evidence of the obligations of the Borrower to the Agent and the Lenders hereunder, the date of each Advance and the amounts the Borrower has paid from time to time on account of the Obligations.

ARTICLE 5 CONDITIONS OF LENDING

5.1 Closing Date Deliverables

The obligation of the CIB to make the Credit Facility available to the Borrower shall be subject to the conditions precedent that the CIB shall be satisfied with, or the Borrower shall have delivered to the CIB, as the case may be, on or before the Closing Date, the following in form, substance and dated as of a date satisfactory to the CIB and its counsel:

- (a) **Borrower Organizational Documents.** A copy, certified by a Responsible Officer of the Borrower, in such person's capacity as an officer of the Borrower and not in his or her personal capacity, of:
 - (i) the by-law authorizing the establishment of the Credit Facility, the execution, delivery and performance by the Borrower of this Agreement, and the borrowing of funds on and subject to the terms hereof;
 - (ii) all other instruments evidencing necessary action of the Borrower in connection with the execution, delivery and performance of this Agreement by the Borrower and of any required Authorization with respect to such matters; and
 - (iii) the names and true signatures of the officers of the Borrower who are authorized to sign this Agreement and the other Transaction Documents manually or by mechanical means.
- (b) **Borrower Representations and Warranties; Default.** A certification by a Responsible Officer of the Borrower, in such person's capacity as an officer of the Borrower and not in his or her personal capacity, that:
 - (i) the representations and warranties given by the Borrower under the Credit Documents are true and correct; and
 - (ii) no Event of Default or Default has occurred and is continuing or can reasonably be expected to occur.
- (c) **KYC Deliverables.** The information and documentation requested by the CIB in accordance with Section 14.1(a) in respect of the Borrower.
- (d) **Approvals and Consents.** The CIB being satisfied that all material approvals and consents, including all court, regulatory and governmental approvals and consents (including any such approvals and consents that are required under Applicable Law), have been obtained in order to complete the transactions contemplated by the Credit Documents.
- (e) **Proceedings and Litigation.** The CIB being satisfied that there is no pending or threatened judicial, administrative or other proceedings, investigations or litigation which seek to adjourn, delay, enjoin, prohibit or impose material

limitations on any aspect of the transactions contemplated by the Credit Documents.

- (f) **Borrower Legal Opinion.** A legal opinion from counsel to the Borrower in form and substance satisfactory to the CIB.
- (g) **Project Due Diligence.** The CIB shall have completed its due diligence review of the Project with results satisfactory to it.
- (h) **Financial Model.** A Financial Model that is acceptable to the CIB (with advice from the Technical Advisor) and the Borrower.

5.2 Conditions Precedent to Initial Advances and to Initial Advances Following Each Subsequent Financial Close for Additional Purchases

The obligation of the CIB to make an initial Advance (i) on or after the date hereof in connection with the first Financial Close, and (ii) on or after each Financial Close relating to an Additional Purchase, in each case is subject to the applicable conditions precedent in Section 5.3 and the conditions precedent that the CIB shall be satisfied with, or the Borrower shall have delivered to the CIB, as the case may be, on or before the day of such Advance (but only to the extent not previously delivered to the CIB, unless otherwise requested by the CIB), the following in form, substance and dated as of a date satisfactory to the CIB and its counsel:

- (a) **Funding Supplement.** A Funding Supplement that identifies the specific model or models of ZEBs being purchased and includes the Forecast Savings for the ZEB Fleet, all of the terms of which shall have been agreed to by the CIB in its sole and absolute discretion, executed by the Borrower.
- (b) **Project Documents.** Copies of all Project Documents duly executed by the parties thereto.
- (c) **Project Due Diligence.** The CIB shall have completed its due diligence review of any updates to the Project in conjunction with each Additional Purchase with results satisfactory to it.
- (d) **Implementation Plan.** A detailed timeline and plan for the acquisition and implementation of the ZEB Fleet and the Charging Infrastructure and the commencement of Operation of the ZEB Fleet.
- (e) **Financial Model.** A Financial Model, updated in respect of each Financial Close and Additional Purchase, that is acceptable to the CIB (with advice from the Technical Advisor) and the Borrower.
- (f) **Insurance.** The CIB, acting reasonably, being satisfied with the amount, types and terms and conditions of all insurance maintained by the Borrower in connection with the ZEBs that are or will be included in the ZEB Fleet, and the Agent shall have received copies of the endorsements naming the Agent as an additional insured or loss payee, as the case may be, under all insurance policies to be maintained with respect to the ZEBs; or, if the Borrower self-insures, the CIB, acting reasonably, being satisfied that the Borrower has, or has access to,

the financial resources to do so and the Borrower is doing so in a manner consistent with the practice of other municipalities in Ontario.

- (g) **Charging Infrastructure.** The CIB (with advice from the Technical Advisor) being satisfied that the Charging Infrastructure (together with other charging infrastructure that is available to the Borrower, if applicable) is sufficient to support the Operation of the ZEB Fleet, is available to the Borrower and is operational, or will be available to the Borrower and operational by no later than the date on which a particular ZEB is scheduled to be in Operation.
- (h) **Charging Infrastructure Lands.** If the property on which the Charging Infrastructure that is or will be used by the Borrower is not owned by the Borrower, evidence that the Borrower has the legal right to access and use such property for the purpose of operating the Charging Infrastructure thereon (provided that, for greater certainty, if such right is for a period of time that expires prior to the end of the Term, the Borrower will not be relieved of any of its obligations under this Agreement, including its obligations under Section 7.1(d)).
- (i) **Approvals and Consents.** The CIB being satisfied that all material approvals and consents, including all court, regulatory and governmental approvals and consents (including any such approvals and consents that are required under Applicable Law), have been obtained in order to complete the transactions contemplated by the Transaction Documents.
- (j) **Proceedings and Litigation.** The CIB being satisfied that there is no pending or threatened judicial, administrative or other proceedings, investigations or litigation which seek to adjourn, delay, enjoin, prohibit or impose material limitations on any aspect of the transactions contemplated by the Transaction Documents, which condition will be satisfied by the delivery of a duly executed Drawdown Notice that includes a confirmation and certification to that effect.
- (k) **Electricity and Maintenance Costs Tracking.** The CIB (with advice from the Technical Advisor) being satisfied that the Borrower has a properly functioning computerized system for tracking electricity consumption by each ZEB in the ZEB Fleet and maintenance costs for each such ZEB.
- (l) **Project Costs.** The CIB being satisfied that the Borrower has sufficient funds on hand or available to it to satisfy all Project Costs, other than Funded ZEB Acquisition Costs, that have been, or will be, incurred by the Borrower at the relevant time, which condition will be satisfied by the delivery of a duly executed Drawdown Notice that includes a confirmation and certification to that effect.
- (m) **Technical Advisor's Report.** A report from the Technical Advisor confirming that (i) the specific model or model(s) of ZEBs specified in the Funding Supplement are expected to perform no worse than implied by the Baseline Assumptions associated with the relevant Additional Purchase, (ii) the Charging Infrastructure and any other infrastructure sufficient to support the Operation of the ZEB Fleet following the completion of the relevant Additional Purchase is available to the ZEB

Fleet and is operational, or will be available and operational by no later than the date on which the particular ZEBs which are the subject of Advance are scheduled to be in Operation, (iii) the Borrower has made satisfactory arrangements to Operate and maintain the ZEBs being acquired through the Additional Purchase in accordance with the applicable Baseline Assumptions, (iv) the warranty coverage for the ZEBs being acquired through the Additional Purchase meets agreed minimum terms, and such other information as the CIB may reasonably require, (v) the Borrower has provided training to its staff on Operation and maintenance of ZEBs, and (vi) the Borrower has an adequate pre-inspection process for ZEBs being acquired.

5.3 Conditions Precedent to All Advances

(a) The obligation of the CIB to make any Advance pursuant to this Agreement shall be subject to the condition precedent that at least ten (10) Business Days prior to the date of the Advance, the Borrower shall have delivered to the CIB a Drawdown Notice that is consistent with the terms of an approved Funding Supplement.

(b) Each of the giving of any Drawdown Notice and the acceptance by the Borrower of any Advance shall be deemed to constitute a representation and warranty by the Borrower that, on the date of such Drawdown Notice or Advance, as the case may be:

- (i) the representations and warranties given by the Borrower under the Credit Documents are true and correct on and as of each such date, all as though made on and as of each such date, except for any representation and warranty which is stated to be made as of a certain date;
- (ii) no event or condition has occurred and is continuing, can reasonably be expected to occur, or would result from such Advance or giving effect to the Drawdown Notice, which constitutes a Default or an Event of Default;
- (iii) such Advance, or otherwise giving effect to the Drawdown Notice, will not violate any Applicable Law in effect at that time; and
- (iv) the Borrower has delivered to the Agent true, correct and complete copies of all Project Documents.

5.4 No Waiver

The making of an Advance or otherwise giving effect to any Drawdown Notice pursuant to this Agreement, without the fulfilment of one or more conditions set forth in Section 5.1, 5.2 or 5.3, shall not constitute a waiver of any such condition, and the CIB reserves the right to require fulfilment of such condition in connection with any subsequent Drawdown Notice or Advance.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties

The Borrower represents and warrants to the Agent and the CIB, acknowledging and confirming that the Agent and the CIB are relying thereon without independent inquiry in entering into this Agreement and providing Advances hereunder, that:

(a) **Existence, Power and Authority.** The Borrower is an upper-tier municipality existing under the *Municipal Act, 2001* (Ontario) and has all requisite corporate or other power and authority to own and operate its properties and Assets and to conduct its affairs as now being conducted by it, to perform the Project and to enter into and perform its obligations under the Transaction Documents.

(b) **Authorization, Approvals, etc.** The execution and delivery by the Borrower of each of the Transaction Documents and the performance by the Borrower of its obligations thereunder, and the performance of the Project, have been duly authorized by all necessary action and no Authorization under any Applicable Law, and no registration, qualification, designation, declaration or filing with any Governmental Authority, and no consent of any third party, is or was necessary therefor or to perfect the same, except as are in full force and effect, unamended, at the date hereof (or as may become necessary subsequent to the date hereof and notice of which has been given to the Agent).

(c) **Execution and Binding Obligation.** The Borrower has duly executed and delivered the Transaction Documents, and such Transaction Documents constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower by the other parties thereto in accordance with their respective terms, subject only to any limitation under Applicable Law relating to bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally, and general equitable principles including the discretion that a court may exercise in the granting of equitable remedies.

(d) **Financial Model.** The Borrower has reviewed the Financial Model and the Forecast Savings, together with all estimates, budgets, forecasts and projections provided to the Lenders by or on behalf of the Borrower in connection therewith, and in each case:

- (i) all estimates, budgets, forecasts and projections that were provided to the Lenders have been prepared or were arrived at in good faith, after due and careful consideration and enquiry, and are reasonable in the circumstances;
- (ii) the Borrower is not aware of any information that would reasonably be materially relevant thereto but which has not been contemplated therein; and
- (iii) to the Borrower's knowledge, all assumptions (including the Specified Distance) stated therein are reasonable in the circumstances.

(e) **No Default or Event of Default.** No Default or Event of Default has occurred and is continuing.

(f) **Insurance.** The Borrower maintains, or causes to be maintained, insurance relating to the Project with reputable insurers in amounts and on terms which a prudent operator of buses, including ZEBs, would maintain, or the Borrower self-insures for the losses and liabilities that would otherwise be subject to such insurance coverage. Without limiting the generality of the foregoing, if applicable, all such policies of insurance:

- (i) are sufficient for compliance with all requirements of Applicable Law and of all Transaction Documents to which the Borrower is a party,
- (ii) are valid, outstanding and enforceable policies; and
- (iii) provide adequate insurance coverage in at least such amounts and against at least such risks (but including in any event, public liability) as are usually insured against in the same general area by operators of buses.

(g) **Compliance with Laws.** The Borrower has been and is in compliance, in all material respects, with all Applicable Law applicable to the transactions contemplated by this Agreement and the Project. The Borrower has not received any notice to the effect that, or otherwise been advised that, it is not in compliance with any Applicable Law applicable to the transactions contemplated by this Agreement or the Project, and the Borrower does not know of any currently existing circumstances that are likely to result in the violation of any Applicable Law applicable to the transactions contemplated by this Agreement or the Project by it.

(h) **Financial Statements.** The financial statements of the Borrower that have been provided to the Lenders are correct and complete and fairly present the consolidated financial position and results of operations and cash flows of the Borrower, in each case, as of such dates and for such periods in accordance with applicable accounting principles.

(i) **Books and Records.** All books and records of the Borrower relating to the Project have been fully, properly and accurately kept and completed in accordance with applicable accounting policies, and there are no material inaccuracies or discrepancies of any kind contained or reflected therein.

(j) **Charging Infrastructure Property.**

- (i) If the Borrower will be or is using Charging Infrastructure that is or will be owned, leased or licensed by the Borrower in connection with the Operation of some or all of the ZEBs in the ZEB Fleet:
 - (A) The Borrower owns, leases or licenses, or will own, lease or license, and has or will have all necessary rights to use the real property on which the Charging Infrastructure for such ZEBs is or will be located and operated to the extent required to enable it to perform its obligations under this Agreement. The use of such real property for such purpose does not and will not breach, in any material respect, any Applicable Law or official plans or, in the case of any leased property, the terms of the lease of such property.

- (B) The Borrower has all necessary rights to use Charging Infrastructure that is sufficient to support the Operation of such ZEBs, or the Borrower will have such rights by no later than the date on which any particular ZEB is scheduled to be in Operation.
- (ii) If the Borrower will be or is receiving charging as a service in connection with the Operation of some or all of the ZEBs in the ZEB Fleet:
 - (A) The Borrower is party to one or more agreements pursuant to which it will receive charging as a service (each, a “**CAAS Agreement**”), in each case sufficient to support the Operation of such ZEBs, and all of the terms of such CAAS Agreements remain in full force and effect.
 - (B) The Borrower is compliant in all material respects with the terms of all CAAS Agreements and has not received notice from any counterparty to a CAAS Agreement regarding its intention to terminate such CAAS Agreement in whole or in part.
 - (C) The Borrower has delivered to the Agent true, correct and complete copies of each CAAS Agreement.
- (k) **Litigation.** There are no Claims by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against or affecting any of the Borrower or its undertaking, property or assets that involve any of the Transaction Documents, the rights of the Borrower thereunder, or the rights or obligations of the parties thereunder.
- (l) **Status of Project Documents.** The Borrower is not in breach or violation of or in default, in each case in any material respect, under any Project Document. To the knowledge of the Borrower, no other counterparty to any Project Document is in breach or violation of or in default, in each case in any material respect, under any Project Document.
- (m) **Existing Encumbrances.** There are no existing Encumbrances relating to the ZEBs, other than Permitted Encumbrances.
- (n) **No Immunity.** In any proceedings in the Province of Ontario or elsewhere in relation to the Transaction Documents, the Borrower will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or legal process.
- (o) **Full Disclosure.** All information (including that disclosed in all financial statements) pertaining to the Borrower (other than projections) that has been or will be made available to the Lenders or the Agent by the Borrower is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made.

6.2 Survival of Representations and Warranties

The representations and warranties in this Agreement set forth or contained in any certificates or documents delivered to the Agent and the Lenders pursuant to this Agreement shall not merge in or be prejudiced by and shall survive any Advance hereunder and shall continue in full force and effect (as of the date when made or deemed to be made) so long as any amounts are owing by the Borrower to the Lenders hereunder, notwithstanding any investigations or examinations which may be made or conducted by or on behalf of the Agent or any Lender.

ARTICLE 7 COVENANTS OF THE BORROWER

7.1 Affirmative Covenants

So long as any amount owing hereunder remains unpaid or any Lender has any obligation under this Agreement or under any other Credit Documents, the Borrower shall:

(a) **Reporting Requirements.** During the Term, comply with the reporting and disclosure obligations specified in Schedule F, including by preparing (where applicable, in accordance with applicable accounting principles) and delivering to the Agent on behalf of the Lenders, in a form satisfactory to the Majority Lenders, the information, documents and notices listed in such Schedule. In addition, the Borrower shall provide or cause to be provided to the Agent, promptly upon request, any information relating to the Project, or to the Borrower in relation to the Project, that the Agent or any Lender may reasonably require in connection with the financial condition, business, property and operations of the Borrower.

(b) **Existence; Conduct of Affairs.** Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, and obtain, preserve, renew and keep in full force and effect any and all Material Permits.

(c) **Payment Obligations.** Pay all amounts when due under this Agreement.

(d) **Operation and Maintenance of ZEBs.**

(i) Prior to Operating any ZEB that is part of the ZEB Fleet, conduct a pre-delivery inspection of such ZEB and rectify, or cause to be rectified, any issues identified during such inspection. If requested by the Agent, the Borrower shall provide a copy of each inspection report to the Agent promptly following such request, and the Agent shall be entitled to disclose such report to the Technical Advisor. If requested by the Agent, a Responsible Officer of the Borrower, in such person's capacity as an officer of the Borrower and not in his or her personal capacity, shall certify to the Agent that the Borrower has complied with its obligations under this Section 7.1(d)(i), and such certification shall include reasonable details regarding the rectification of the issues.

- (ii) Keep and maintain the ZEBs that are part of the ZEB Fleet and the Charging Infrastructure in good working order and condition, ordinary wear and tear excepted.
- (iii) Manage, Operate and maintain the ZEBs that are included in the ZEB Fleet and the Charging Infrastructure:
 - (A) in accordance with the recommendations of the ZEBs Seller and the manufacturer(s) and/or vendor(s) of the Charging Infrastructure, as applicable;
 - (B) in accordance with prudent industry practice in all material respects and in compliance with the terms and provisions of all Material Permits; and
 - (C) in compliance with all Applicable Law; and
 - (D) in compliance with the terms and conditions of all warranties from the applicable ZEBs Seller.
- (iv) Operate each ZEB for at least the Specified Distance for such ZEB for such Financial Year. Notwithstanding the foregoing, the Borrower will not be in default of the foregoing obligation under this Section 7.1(d)(iv) if:
 - (A) the failure by the Borrower to Operate each ZEB for the Specified Distance is the result of an Excusing Cause;
 - (B) the Actual Savings that are attributable to the ZEB Fleet for such Financial Year are equal to or greater than the Forecast Savings for the ZEB Fleet for such Financial Year; or
 - (C) the Borrower repays to the Lender, on the first Payment Date that follows the end of the applicable Financial Year, on account of the Obligations, an amount equal to the Forecast Savings for the ZEB that was not Operated for the Specified Distance during such Financial Year.
- (v) In the events that
 - (A) a ZEB continues to have a useful life at the end of the planned Operating period for such ZEB (as reflected in the applicable Funding Supplement); and
 - (B) the Deferred Savings Amounts at the end of such planned Operating period is greater than zero,

the Borrower shall use commercially reasonable efforts to continue to Operate such ZEB, and such ZEB will continue to be part of the ZEB Fleet for all purposes of this Agreement, until the earliest to occur of the following: (i) the Maturity Date, (ii) the end of the useful life of such ZEB, or (iii) the first Payment

Date on which the Deferred Savings Amount is equal to zero. There will not be any adjustments to the Estimated Eligible ZEB Costs, the Prorated GHG Bus Fuel Costs and the Prorated GHG Bus Maintenance Costs that are in effect as of the end of the planned Operating period in relation to the Operation of such ZEB, unless otherwise agreed to by the Majority Lenders (with advice from the Technical Advisor) and the Borrower.

(e) **Extended Warranty Coverage.**

- (i) Use commercially reasonable efforts to obtain extended warranty coverage from the ZEBs Seller under the applicable ZEB Purchase Agreement for the ZEBs that are included in the ZEB Fleet.
- (ii) In applicable circumstances, submit a warranty claim within applicable time periods and otherwise in accordance with the terms and conditions of the warranty coverage.

(f) **Compliance with Laws and Project Documents.** Comply with:

- (i) all Applicable Law and orders of any Governmental Authority applicable to it or its Assets in each case in all material respects; and
- (ii) all Project Documents to which the Borrower is a party.

(g) **Project Documents.** Maintain or cause to be maintained in full force and effect each of the Project Documents, and provide true, correct and complete copies thereof to the CIB prior to or at each applicable Financial Close, to the extent not previously provided to the CIB. Upon the Borrower becoming aware that it or another party has breached or is in default under any Transaction Document in a manner that could reasonably be expected to have a Material Adverse Effect, or if another party has notified the Borrower of its intention to terminate the Transaction Document in whole or in part, the Borrower shall provide notice thereof to the CIB.

(h) **Books and Records; Inspection Rights.** Keep proper books of record and account in respect of the Project in which full, true and correct entries are made of all dealings and transactions in relation to the ZEB Fleet and the Charging Infrastructure and its obligations under the Transaction Documents. The Borrower shall permit any representatives designated by the Agent or any Lender, upon reasonable prior notice and during normal business hours, to visit and inspect its ZEB Fleet and its properties relating to the Operation thereof, including the Charging Infrastructure, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and auditors, all at such reasonable times and as often as reasonably requested by the Agent.

(i) **Remedial Plan.** If:

- (i) there occurs a Savings Shortfall on three consecutive Payment Dates; or
- (ii) on any such Payment Date the Aggregate Forecast Savings plus the Net Borrower Savings in respect of the ZEB Fleet are not reasonably

expected to be sufficient to enable the Borrower to repay all of the Obligations prior to or on the Maturity Date; or

- (iii) following the commencement of the Operation of a ZEB but prior to the applicable Payment Commencement Date, any of the circumstances in clause (i) or clause (ii) above would have occurred if, for purposes of this Agreement, Payment Dates had occurred during such period,

provide notice thereof to the Lenders and, at the request of the Lenders, prepare a remedial plan (a "**Remedial Plan**") that reasonably demonstrates how the Borrower will endeavour to improve Actual Savings to, or reasonably close to, the level of Forecast Savings, provided that, for greater certainty, such remedial plan shall be limited to such actions that are commercially reasonable and which do not impose requirements beyond what is required by transit industry benchmark standards and best practices. The Borrower shall deliver the Remedial Plan to the Lenders within the reasonable time period specified by the Lenders at the time of their request. The Remedial Plan will be subject to the review and approval by the Lenders (with advice from the Technical Advisor) and may be updated and revised from time to time, with the consent of the Lenders. If the Lenders do not approve the Remedial Plan (or any amendment or update thereto), the Borrower shall cooperate with the Lenders and the Technical Advisor to revise the Remedial Plan. If the Borrower does not accept the advice from the Lenders regarding revisions to the Remedial Plan, the Borrower may Dispute the Lenders' subsequent decision not to approve the Remedial Plan in accordance with the Dispute Resolution Procedures. Following the approval of the Remedial Plan or the finalization thereof in accordance with the Dispute Resolution Procedures, the Borrower shall implement and comply with the Remedial Plan.

(j) **Insurance.** Maintain, or cause to be maintained, with financially sound and reputable insurers acceptable to the Lenders, acting reasonably, insurance with respect to the ownership and operation of the ZEBs and the Charging Infrastructure against such liabilities, casualties, risks and contingencies and in such types and amounts as is customary in the case of other bus owners and operators in the same geographic area and in accordance with any requirement of any Governmental Authority, or self-insure with respect to such liabilities, casualties, risks and contingencies. In the case of any fire, accident or other casualty causing loss or damage to any of the ZEBs that are included in the ZEB Fleet, (i) the Borrower shall use all proceeds of such policies promptly to repair or replace any such damaged ZEBs, and otherwise shall be used as directed by the Lenders to prepay the Obligations in accordance with, and to the extent contemplated by, Section 4.2(b), or (ii) if the Borrower self-insures, the Borrower shall promptly repair or replace any such damaged ZEBs or, if applicable, comply with Section 4.2(b). If applicable, the Borrower shall obtain endorsements to all such policies naming the Agent as a loss payee or additional insured (as applicable), and containing provisions that such policies will not be cancelled without thirty (30) days' prior written notice having been given by the insurance company to the Agent. If the Borrower has elected to self-insure, it shall not end such self-insurance program unless it otherwise complies with the insurance coverage requirements specified in this Section 7.1(i).

(k) **Cure Defects.** Promptly cure or cause to be cured any defects in the execution and delivery of any of the Transaction Documents or any of the other agreements, instruments or documents contemplated thereby or executed pursuant thereto or any defects in the validity or enforceability of any of the Transaction Documents and execute and deliver or cause to be executed and delivered all such agreements, instruments and other documents as the Agent may consider necessary or desirable for the foregoing purposes.

(l) **Lifecycle Reserve Account.** Establish, maintain and fund the Lifecycle Reserve Account in accordance with Section 7.4 and permit only payments of Permitted Reserve Account Expenditures therefrom until the Maturity Date.

(m) **Disposition of ZEBs.**

- (i) The Borrower reserves all rights to maintain best efforts to maximize disposal proceeds when ZEBs are removed from active service, including but not limited to: repurposing batteries, selling batteries, scrap sales and sales to any other public transit agency or private transportation company, broker, or third party. For greater clarity, any such disposal proceeds shall be included in the Net Proceeds from the Disposition for purposes of Section 2.3 and the Disposition Amount for purposes of Section 4.2(a), and to the extent batteries are repurposed (other than within the ZEB Fleet) for use by the Borrower, the Net Proceeds from such Disposition shall be agreed by the CIB and the Borrower, each acting reasonably, as the amount of the Disposition Amount that would have been received had such batteries been disposed of to a Person acting at arm's length to the Borrower.
- (ii) If the Borrower proposes to Dispose of any ZEB, provide notice to the Lenders at least one (1) month prior to such Disposition, which notice will include the reason and proposed timing for the Disposition, and the anticipated proceeds therefrom. At the Lenders' request, the Borrower shall meet with the Lenders prior to completion of the Disposition to discuss the proposed Disposition and how any adverse effect thereof on the Borrower's obligations hereunder may be mitigated. The Borrower shall ensure that the timing of the delivery of the notice required by this Section 7.1(m) will provide sufficient time for the Lenders to review and consider the contents thereof and to meet with the Borrower for the purposes contemplated in the foregoing sentence prior to the completion of the Disposition.

(n) **Financial Model.** Update the Financial Model:

- (i) in connection with the entering into of each Funding Supplement from time to time;
- (ii) to reflect the quarterly results of the Borrower in accordance with item 1(b) of Schedule F; and
- (iii) from time to time in accordance with item 4(g) of Schedule F,

and deliver such updated Financial Model to the Agent.

7.2 Negative Covenants

So long as any amount owing hereunder remains unpaid or any Lender has any obligation under this Agreement or under any other Credit Documents, the Borrower agrees that it shall not:

(a) **Project Documents.**

- (i) Take any action that constitutes a breach of any of the provisions of the Transaction Documents. The Borrower shall cure any breach or default by the Borrower under any of the Transaction Documents promptly within the time period specified in the applicable Transaction Document, to the extent such breach or default is curable.
- (ii) Forgive, release or compromise any amount owed to or becoming owed to the Borrower under any Project Document, to the extent that doing so could reasonably be expected to have a Material Adverse Effect.
- (iii) Assign, amend, modify, supplement, restate, waive, cancel or terminate (or consent to any cancellation or termination of), in whole or in part, any Project Document to which the Borrower is a party if such assignment, amendment, modification, supplement, restatement, waiver, cancellation or termination could reasonably be expected to have a Material Adverse Effect;

(b) **Encumbrances.** Create, incur, assume or suffer to exist any Encumbrance on any of the ZEBs in the ZEB Fleet or on any of the Borrower's rights and interests in, to and under the corresponding ZEB Purchase Agreements or the warranties given by the manufacturers of the ZEBs in the ZEB Fleet, other than Permitted Encumbrances.

(c) **Disposal of ZEBs.** Dispose of any of the ZEBs in the ZEB Fleet, unless Sections 4.2(a) and 7.1(m) are fully complied with.

(d) **Carrying on Project.** After the Closing Date, cancel or terminate the Project in whole or in part or change the mix of classes of ZEBs contemplated for the ZEB Fleet as reflected in the Financial Model, unless Section 4.2(c) is fully complied with.

(e) **Amendments to Constatng Documents.** Allow any amendments to its constating documents or by-laws in a manner that could reasonably be expected to have a Material Adverse Effect.

7.3 Integrity Provisions

So long as any amount owing hereunder remains unpaid or any Lender has any obligation under this Agreement or under any other Credit Documents, the Borrower agrees as follows:

- (a) The Borrower shall not pay, offer, promise to pay, or authorize the payment, directly or indirectly through any other person or firm, partnership, company or other entity, of any money, financial instruments or anything of material value to any person, firm, partnership, company or other entity employed by or acting for or on behalf of any party to any Transaction Document, whether private or governmental, or any government official or employee or any political party or candidate for political office, for the purpose of illegally inducing or rewarding any action by a potential employer, main contractor, or contractor or official favourable to any of the parties.

- (b) The Borrower, in the promotion of its activities under the Transaction Documents and the Project, will maintain ethical standards of business conduct, will not engage in corrupt practices and will comply with all relevant anti-corruption laws, conventions and treaties.
- (c) The Borrower shall: (i) avoid any real, potential and/or perceived conflict of interest in the performance of its obligations under the Transaction Documents; (ii) disclose to the CIB without delay any real, potential and/or perceived conflict of interest that arises during the performance of its obligations under the Transaction Documents; and (iii) comply with any reasonable requirements prescribed by the CIB to resolve any real, potential and/or perceived conflict of interest.
- (d) The Borrower shall ensure that any subcontractor undertaking any part of the Project and the Borrower's or any such subcontractor's affiliates, directors, officers, employees and agents are not persons who have committed a Prohibited Act or whose standing or activities (i) are inconsistent with the CIB's role and mandate; (ii) may compromise the reputation or integrity of the CIB or the Federal Government of Canada; or (iii) are inconsistent with the nature of the Project, so as to negatively affect public perception of the Project or the ZEBs program of the CIB.
- (e) For purposes of this Section 7.3, a person commits a "Prohibited Act" by:
 - (i) offering, giving or agreeing to give to the CIB or to any Governmental Authority (or to anyone employed by or acting on their behalf) or to any of their respective directors, officers, employees, agents or officials, or to any family member of such persons, any gift or consideration of any kind as an inducement or reward:
 - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Agreement or any other agreement with the CIB or any Governmental Authority in connection with the Project; or
 - (B) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the CIB or any Governmental Authority in connection with the Project;provided that this Section 7.3(e)(i) shall not apply to the Borrower (or anyone employed by or acting on its behalf) providing consideration to the CIB or any Governmental Authority in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of the Borrower under this Agreement or any other agreement with the CIB or any Governmental Authority in connection with the Project;
 - (ii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Agreement or any other

agreement with the CIB or any Governmental Authority in connection with the Project; or

- (iii) defrauding or attempting to defraud or conspiring to defraud any Governmental Authority.

7.4 Lifecycle Reserve Account

(a) The Borrower shall establish and maintain, in respect of the ZEB Fleet, a separate lifecycle reserve account (each, a “**Lifecycle Reserve Account**”), which shall be opened in the name of the Borrower. Prior to the Maturity Date (or on such earlier date as the Obligations become payable hereunder), the Borrower shall use the funds deposited in the Lifecycle Reserve Account including all interest thereon (collectively, the “**Lifecycle Reserve Account Funds**”) solely for the purpose of paying Permitted Reserve Account Expenditures.

(b) Beginning on the Payment Commencement Date, and on each Payment Date thereafter, the Borrower shall deposit into the Lifecycle Reserve Account an amount of funds (the “**Lifecycle Reserve Deposit Amount**”) calculated in accordance with this Section 7.4(b). If, during the applicable Quarterly Payment Period, the Actual Savings is greater than the Forecast Savings amount, the Lifecycle Reserve Deposit Amount will be equal to the lesser of:

- (i) the sum of the amounts specified in the Funding Supplement as the “Specified Reserve Deposit Amount” for each ZEB in the ZEB Fleet, other than ZEBs in respect of which the Borrower has repaid to the Lenders a Disposition Amount, an Insurance Payment or a Cancellation Payment in accordance with Section 4.2 (the “**Specified Reserve Deposit Amount**”); or
- (ii) the amount by which the Actual Savings exceeds the Quarterly Payment Amount for such Quarterly Payment Period;

provided, however, that if, for any Quarterly Payment Period, the Lifecycle Reserve Deposit Amount is less than the Specified Reserve Deposit Amount (such difference, the “**Lifecycle Reserve Deposit Deficiency**”), an amount equal to the Lifecycle Reserve Deposit Deficiency will be added to the Specified Reserve Deposit Amount for purposes of calculating the Lifecycle Reserve Deposit Amount for the next following Quarterly Payment Period.

ARTICLE 8 EVENTS OF DEFAULT

8.1 Events of Default

Each of the following events shall constitute an Event of Default under this Agreement:

- (a) the Borrower shall fail to make any payment on account of the Obligations under this Agreement when due, whether by acceleration or otherwise, including pursuant to Section 4.1 or Section 4.2, and such failure shall remain unremedied for a period of five (5) days following notice thereof from the Agent to the Borrower;

- (b) any representation or warranty or certification made or deemed to be made by the Borrower in this Agreement or any other Credit Document shall prove to have been incorrect when made or deemed to be made, and if the circumstances giving rise to such incorrect representation, warranty or statement are capable of correction (such that, thereafter such representation, warranty or statement would prove correct), such representation, warranty or statement remains uncorrected for a period of thirty (30) days following notice thereof from the Agent;
- (c) the Borrower shall fail to perform, observe or comply with any of the covenants contained in **Article 7** and such failure shall remain unremedied for a period of thirty (30) days following notice thereof by the Agent; provided, however, the failure to perform, observe or comply with the following reporting and disclosure obligations listed in Schedule F will not constitute an Event of Default: item 1(b); item 2(b); item 2(c), but only to the extent relating to the Project (i.e., clause (B)); and item 2(e);
- (d) the Borrower shall fail to perform or observe any other term, covenant or agreement contained in any Credit Document (other than a covenant or agreement whose breach or default in performance is elsewhere in this Section 8.1 specifically dealt with), and such default (if capable of remedy) shall remain unremedied for sixty (60) days;
- (e) any process of execution is enforced or levied upon the ZEBs in the ZEB Fleet having a value in excess of the Advances Outstanding in respect of such ZEBs and remains unsatisfied for a period (for each action) of forty-five (45) days;
- (f) any judgment or order for the payment of money that could reasonably be expected to have a Material Adverse Effect shall be rendered against the Borrower and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order; or (ii) there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;
- (g) if the Borrower:
 - (i) becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement between it or any class of its creditors;
 - (ii) commits an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or under analogous foreign law, or makes an assignment of its property for the general benefit of its creditors under such Act or under analogous foreign law, or makes a proposal (or files a notice of its intention to do so) under such Act or under analogous foreign law;
 - (iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise,

arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of its or its debts or any other relief, under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and any applicable corporations legislation) or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;

- (iv) applies for the appointment of, or the taking possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property; or
 - (v) threatens to do any of the foregoing, or takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this Section 8.1(g) or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defence thereof;
- (h) any petition is filed, application made or other proceeding instituted against or in respect of the Borrower:
- (i) seeking to adjudicate it an insolvent;
 - (ii) seeking a receiving order against it under the *Bankruptcy and Insolvency Act* (Canada) or under analogous foreign law;
 - (iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors (including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) and any applicable corporations legislation or at common law or in equity); or
 - (iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official for it or any substantial part of its property;

and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of thirty (30) days after the institution thereof, provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against such Person thereunder in the interim, such grace period will cease to apply, and provided further that if such Person files an

answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply;

- (i) any other event occurs which, under the laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in either Section 8.1(g) or 8.1(h) and if the event is equivalent to the event referred to in Section 8.1(h), the 30-day grace period will apply as set out in Section 8.1(h);
- (j) any of the Credit Documents executed and delivered by Borrower shall, except as a result of the acts or omissions of the Lenders, cease to be in full force and effect, and in each case, such failure shall remain unremedied for five (5) Business Days following notice thereof by the Agent to the Borrower;
- (k) the validity of any of the Credit Documents or the applicability thereof to the Advances shall be disaffirmed by or on behalf of the Borrower, or the denial by the Borrower of any of its obligations under any Credit Document;
- (l) the enactment of any legislation or the entering or obtaining of any decree or order of a court, statutory board or commission which renders any of the Credit Documents or any material provision of any of them unenforceable, unlawful or otherwise changed, if the Borrower does not, within ten (10) days of receipt of notice of the Credit Document or material provision becoming unenforceable, unlawful or otherwise changed, replace the Credit Document with a new agreement that is in form and substance satisfactory to the Agent in its sole discretion, acting reasonably, or amend the Credit Document to the satisfaction of the Agent in its sole discretion, acting reasonably;
- (m) the inclusion in any report of the Borrower's auditors of any qualification which is unacceptable to the Majority Lenders, acting reasonably;
- (n) any Material Permit of the Borrower shall be modified, revoked or cancelled by the issuing party or other Governmental Authority having jurisdiction (in the case of any modification, only if such modification would have a Material Adverse Effect), if the Borrower does not, within thirty (30) days of the Borrower becoming aware of such modification, revocation or cancellation, remedy such modification, revocation or cancellation;
- (o) the occurrence of any event which has a Material Adverse Effect; or
- (p) the Borrower shall fail to secure funding for any of the Project Costs, other than the Funded ZEB Acquisition Costs.

8.2 Acceleration and Termination of Rights

(a) If any Event of Default occurs and is continuing, the CIB shall not be under any further obligation to make Advances and the Majority Lenders may instruct the Agent to give notice to the Borrower (i) declaring the CIB's obligations to make Advances to be terminated, whereupon the Credit Facility shall forthwith terminate, and/or (ii) declaring the Obligations or any of them to be forthwith due and payable, whereupon they shall become and be forthwith

due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower.

(b) Notwithstanding Section 8.2(a), if an Event of Default under Section 8.1(g), 8.1(h) or 8.1(i) occurs and is continuing (an “**Insolvency Event**”), then without prejudice to the other rights of the Lenders as a result of any such event, without any notice or action of any kind by the Agent or the Lenders (all of which are hereby expressly waived by the Borrower), and without presentment, demand or protest (all of which are hereby expressly waived by the Borrower) the CIB’s obligation to make Advances under the Credit Facility shall immediately terminate and the Obligations shall immediately become due and payable.

(c) For purposes of this Section 8.2, the Obligations will be reduced by the amount, if any, by which the Deferred Savings Amount as of the date on which **such Obligations** are declared to be due and payable exceeds the sum of the Net Borrower Savings plus the Lifecycle Reserve Account Funds as of such date.

8.3 Remedies Cumulative

The rights and remedies of the Agent and the Lenders under this Agreement are cumulative and not alternative. Any single or partial exercise by the Agent or any Lender of any right or remedy for a default of any term, covenant, condition or agreement in this Agreement shall not be deemed to be a waiver of or to alter, affect or prejudice any other rights or remedies to which the Agent or any Lender may be lawfully entitled for the same default. Such rights and remedies are in addition to and not in substitution for any rights or remedies provided by Applicable Law. Any waiver by the Agent or a Lender of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained shall be deemed not to be a waiver of any subsequent default. No waiver shall be inferred from or implied by any failure to act or delay in acting by the Agent or a Lender in respect of any default or by anything done or omitted to be done by the Borrower.

8.4 Continuance of Event of Default

An Event of Default shall be deemed to be continuing unless and until such Event of Default shall be expressly waived in writing.

ARTICLE 9 MATTERS RELATING TO LENDERS

9.1 Illegality

If the CIB determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted, ruled or determined that it is unlawful (whether or not having the force of law), for the CIB to fund, make or maintain all or any portion of any Advances or the Credit Commitment, or to determine or charge interest rates based upon any particular rate, then the CIB may (by notice to the Borrower) declare any obligation of the CIB with respect to the activity that is unlawful to be terminated, whereupon the same shall be forthwith terminated. Upon receipt of such notice, the Borrower shall prepay any Obligations to the extent necessary in order to avoid the activity that is unlawful. Upon any such prepayment, the Borrower shall also pay accrued interest on the amount so prepaid. If any such change shall

affect only that portion of the CIB's obligations under this Agreement that is, in the reasonable opinion of the CIB, severable from the remainder of this Agreement so that the remainder of this Agreement may be continued in full force and effect without otherwise affecting any of the obligations of the CIB or the Borrower hereunder, the CIB shall declare its obligations under only that portion so terminated.

9.2 Sharing Among the Lenders

The Lenders agree among themselves that, except as otherwise contemplated by the provisions of this Agreement, all sums received by the Lenders for application against amounts owing by the Borrower under this Agreement (whether received by voluntary payment, by the exercise of any right of set-off, or by counterclaim, or cross-action), shall be shared by each such Lender as nearly as possible in accordance with each such Lender's Applicable Percentage.

ARTICLE 10 AGENCY

10.1 Appointment and Authority

Each of the Lenders hereby irrevocably appoints the Agent to act in its name and on its behalf as its administrative agent hereunder and under the other Credit Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article (other than Section 10.10) are solely for the benefit of the Agent and the Lenders, and the Borrower shall not have rights as a third party beneficiary of any of such provisions.

10.2 Rights as a Lender

The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Affiliate thereof as if such Person were not the Agent and without any duty to account to the Lenders.

10.3 Exculpatory Provisions

(a) The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents. Without limiting the generality of the foregoing, each Lender acknowledges and agrees that the Agent:

- (i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;
- (ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly

contemplated hereby or by the other Credit Documents that the Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall, in the circumstances, be expressly provided for in the Credit Documents), but the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Credit Document or Applicable Law; and

- (iii) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates or businesses that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as is necessary, or as the Agent believes in good faith is necessary) or (ii) in the absence of its own gross negligence or wilful misconduct. The Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing the Default or Event of Default is given to the Agent by the Borrower or a Lender.

(c) Except as otherwise expressly specified in this Agreement, the Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or (v) the satisfaction of any condition specified in this Agreement, other than to confirm receipt of items expressly required to be delivered to the Agent.

10.4 Reliance by Agent

The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Agent may consult with legal counsel (who may be counsel for the Borrower or in-house counsel of the Agent), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.5 Indemnification of Agent

Each Lender agrees to indemnify the Agent and hold it harmless (to the extent not reimbursed by the Borrower), rateably according to its Applicable Percentage (and not jointly or jointly and severally) from and against any and all losses, claims, damages, liabilities and

related expenses, including the fees, charges and disbursements of any counsel, which may be incurred by or asserted against the Agent in any way relating to or arising out of the Credit Documents or the transactions therein contemplated. However, no Lender shall be liable for any portion of such losses, claims, damages, liabilities and related expenses resulting from the Agent's gross negligence or wilful misconduct. The obligations of the Lenders under this Section 10.5 shall survive the repayment of all Advances and the termination of the Credit Facility.

10.6 Delegation of Duties

The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Agent from among the Lenders (including the Person serving as Agent) and their respective Affiliates. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The provisions of this Article and other provisions of this Agreement for the benefit of the Agent shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Credit Facilities provided for herein as well as activities as Agent.

10.7 Replacement of Agent

(a) The Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, in consultation with the Borrower, to appoint a successor. The Agent may also be removed at any time by the Majority Lenders upon thirty (30) days' notice to the Agent and the Borrower as long as the Majority Lenders, in consultation with the Borrower, appoint and obtain the acceptance of a successor within such thirty (30) days.

(b) If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders appoint a successor Agent meeting the qualifications specified in Section 10.7(a), provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents, and (ii) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Agent as provided for above in the preceding paragraph.

(c) Upon a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the former Agent, and the former Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided in the preceding paragraph). After the termination of the service of the former Agent, the provisions of this Agreement shall continue in effect for the benefit of such former Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the former Agent was acting as Agent.

10.8 Non-Reliance on Agent and Other Lenders

Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

10.9 Collective Action of the Lenders

Each of the Lenders hereby acknowledges that, to the extent permitted by Applicable Law, the remedies provided under the Credit Documents to the Lenders are for the benefit of the Lenders collectively and acting together and not severally and further acknowledges that its rights hereunder are to be exercised not severally, but by the Agent upon the decision of the Majority Lenders (or such other number or percentage of the Lenders as shall, in the circumstances, be expressly provided for in the Credit Documents). Accordingly, notwithstanding any of the provisions contained herein or in any other Credit Documents, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder including, without limitation, any declaration of default hereunder or thereunder but that any such action shall be taken only by the Agent with the prior written agreement of the Majority Lenders (or such other number or percentage of the Lenders as shall, in the circumstances, be expressly provided for in the Credit Documents). Each of the Lenders hereby further covenants and agrees that upon any such written agreement being given, it shall co-operate fully with the Agent to the extent requested by the Agent. Notwithstanding the foregoing, in the absence of instructions from the Lenders and where in the sole opinion of the Agent, acting reasonably and in good faith, the exigencies of the situation warrant such action, the Agent may without notice to or consent of the Lenders take such action on behalf of the Lenders as it deems appropriate or desirable in the interest of the Lenders.

10.10 Borrower's Right to Rely on Agent

Unless otherwise provided herein, during the term of this Agreement:

- (a) the Borrower shall be entitled to deal exclusively with the Agent and to rely on discussions with and instructions from the Agent in order to fulfil its obligations hereunder;
- (b) all certificates, statements, notices and other documents which are delivered by the Borrower to the Agent in accordance with this Agreement shall be deemed to have been delivered to each of the applicable Lenders; and
- (c) all payments which are delivered by the Borrower to the Agent in accordance with this Agreement (including any deposit as provided in Section 4.4(a)) shall be deemed to have been duly delivered to each of the applicable Lenders.

10.11 No Partnership

Nothing contained in this Agreement and no action taken pursuant to it shall be deemed to constitute the Lenders a partnership, association, joint venture or other similar entity.

**ARTICLE 11
NOTICES: EFFECTIVENESS; ELECTRONIC COMMUNICATION**

11.1 Notices

Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 11.2), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service or mailed by certified or registered mail to the addresses specified elsewhere in this Agreement or, if to a Lender, to it at its address specified in the Register. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when: (i) if delivered by hand, or certified or registered mail on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in the place of receipt) and otherwise on the next Business Day; or (ii) if sent by overnight courier, on the next Business Day if the delivery was made prior to 5:00 p.m. (local time in the place of receipt) on such Business Day and otherwise on the next Business Day. Notices delivered through electronic communications to the extent provided in Section 11.2, shall be effective as provided in Section 11.2.

11.2 Electronic Communications

(a) Notices and other communications to the Agent and to the Lenders hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender if such Lender has notified the Agent that it is incapable of receiving notices under this Article 11 by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

(b) Unless the Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications to the Agent and to the Lenders posted to an Internet or intranet website in accordance with Section 11.2(a) shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

11.3 Change of Address, etc.

Any party may change its address or email address for notices and other communications hereunder by notice to the other parties hereto given in accordance with the foregoing provisions of this Article 11.

**ARTICLE 12
SUCCESSORS AND ASSIGNS**

12.1 Successors and Assigns

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and the Majority Lenders, and, subject to Section 12.1(b), no Lender may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Borrower and the Agent except:

- (i) to an Eligible Assignee in accordance with the provisions of Section 12.2;
- (ii) by way of participation in accordance with the provisions of Section 12.4;
or
- (iii) after disbursement in full of the Credit Facility, to a securitization vehicle formed by the CIB,

and any other attempted assignment or transfer by any party hereto shall be null and void. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 12.4 and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) The Borrower and the Agent hereby consent to the assignment or other transfer by the CIB of any of its rights or obligations hereunder

- (i) to a special purpose vehicle created to be bankruptcy remote or for financing purposes;
- (ii) to syndicate the Loans;
- (iii) to the Government of Canada;
- (iv) as may be required to comply with Applicable Law;
- (v) to any Minister of the Government of Canada;
- (vi) to any agency of the Government of Canada having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the CIB hereunder; or

(vii) where an Event of Default has occurred and is continuing.

12.2 Assignments by Lenders

(a) Any Lender (a “**Transferring Lender**”) may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement and the other Credit Documents, provided that each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Obligations.

(b) The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, and the Eligible Assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire. Subject to acceptance and recording thereof by the Agent pursuant to Section 12.3, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement with respect to the interest assigned and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and the other Credit Documents, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto and to any other Credit Documents), and shall continue to be liable for any breach of this Agreement by such Lender, with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights and obligations under this Agreement and the other Credit Documents that does not comply with this Section 12.2 shall be treated for the purposes of this Agreement as a participation in such rights and obligations in accordance with Section 12.4. Any payment by an assignee to an assigning Lender in connection with an assignment or transfer shall not be or be deemed to be a repayment by the Borrower or a new Advance to the Borrower.

12.3 Register

The Agent shall maintain at one of its offices in Toronto, Ontario a copy of each Assignment and Assumption delivered to it and a register for the recording of the names and addresses of the Lenders, and principal amounts of the Advances Outstanding owing to each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

12.4 Participations

(a) Any Lender may at any time, without the consent of, or notice to, the Agent, sell participations to any Person that is described in Schedule J (each, a “**Participant**”) in all or a portion of such Lender’s rights and/or obligations under this Agreement and the other Credit Documents (including all or a portion of the Obligations owing to it); provided that:

- (i) such Lender's obligations under this Agreement and the other Credit Documents shall remain unchanged;
- (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and
- (iii) the Borrower, the Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Credit Documents.

The Borrower hereby consents to each such sale and confirms that no further consent of, or notice to, the Borrower is required in connection therewith.

(b) A Lender may not sell participations in all or a portion of such Lender's rights and/or obligations under this Agreement and the other Credit Documents (including all or a portion of the Obligations owing to it) to a Person that is not described in Schedule J without the prior consent of the Agent and the Borrower, and any Person so consented to shall be a Participant for purposes of this Agreement. Notwithstanding the foregoing, in no circumstances may the Borrower, an Affiliate of the Borrower or a natural person become a Participant.

(c) Any payment by a Participant to a Lender in connection with a sale of a participation shall not be or be deemed to be a repayment by the Borrower or a new Advance to the Borrower.

ARTICLE 13 TREATMENT OF CERTAIN INFORMATION: CONFIDENTIALITY AND COMMUNICATIONS PROTOCOL

13.1 Treatment of Certain Information: Confidentiality

(a) Except as otherwise agreed to by the Borrower in writing, each of the Agent and the Lenders agrees to maintain the confidentiality of the Confidential Information (as defined below), except that Confidential Information may be disclosed:

- (i) to it, its Affiliates and its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential);
- (ii) to the extent requested by any regulatory authority having jurisdiction over it (including any self-regulatory authority);
- (iii) to the extent required by Applicable Law or similar legal process;
- (iv) to any other party hereto;
- (v) to the Technical Advisor in connection with the performance of its duties and obligations contemplated by this Agreement;

- (vi) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder;
- (vii) subject to an agreement containing provisions substantially the same as those of this Article 13, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement; and
- (viii) to the extent such Confidential Information (A) becomes publicly available other than as a result of a breach of this Section by such Person or actually known to such Person or (B) is or becomes available to the Agent or any Lender on a non-confidential basis from a source other than the Borrower.

If the Agent or any Lender is requested or required to disclose any Confidential Information (other than by any bank examiner) pursuant to or as required by Applicable Law or by a subpoena or similar legal process, the Agent or such Lender, as applicable, shall use its reasonable commercial efforts to provide the Borrower with notice of such requests or obligation in sufficient time so that the Borrower may seek an appropriate protective order or waive the Agent's, or such Lender's, as applicable, compliance with the provisions of this Article 13, and the Agent and such Lender, as applicable, shall, to the extent reasonable, cooperate with the Borrower in the Borrower obtaining any such protective order.

(b) For purposes of this Agreement, "**Confidential Information**" means all information received from the Borrower relating to the Borrower or any of its businesses, other than any such information that is available to the Agent or any Lender on a non-confidential basis prior to such receipt. Any Person required to maintain the confidentiality of Confidential Information as provided in this Article 13 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Confidential Information as such Person would accord to its own confidential information. In addition, the Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to make available to the public only such Confidential Information as such Person normally makes available in the course of its business of assigning identification numbers.

13.2 Treatment of Certain Information: Communications Protocol

The parties to this Agreement shall comply with the communications protocols and procedures specified in Schedule G.

13.3 Access to Information Act.

(a) The Borrower acknowledges that the CIB is an institution subject to the *Access to Information Act* (Canada) ("**ATIA**") and may be required, except to the extent of any applicable exclusions or exemptions, to disclose information to third parties by operation of the ATIA,

including documents and records relating to this Agreement. If a request is made under ATIA, the Borrower shall cooperate with the CIB and make reasonable efforts to assist the CIB in complying with its duties and obligations as set out in and which arise from the ATIA as it may relate to this Agreement. The Borrower waives any right it may have to make any Claim or take any action against the CIB as a result of any action taken or required to be taken by the CIB for the purpose of complying with ATIA or any final and non-appealable court or tribunal order. To the extent permitted or required by ATIA, the CIB will: (i) give the Borrower notice of any request made under ATIA for confidential information of the Borrower and an opportunity to make representations on why the information should not be disclosed; and (ii) give serious consideration to the appropriate application of the exemptions established in the ATIA to protect such confidential information.

(b) The Agent and the Lenders acknowledge that the Borrower is subject to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) (“**MFIPPA**”) and may be required, except to the extent of any applicable exclusions or exemptions, to disclose information to third parties by operation of the MFIPPA, including documents and records relating to this Agreement. If a request is made under MFIPPA, the Agent and the Lenders shall cooperate with the Borrower and make reasonable efforts to assist the Borrower in complying with its duties and obligations as set out in and which arise from the MFIPPA as it may relate to this Agreement. The Agent and the Lenders waive any right they may have to make any Claim or take any action against the Borrower as a result of any action taken or required to be taken by the Borrower for the purpose of complying with the MFIPPA or any final and non-appealable court or tribunal order. To the extent permitted or required by the MFIPPA, the Borrower will: (i) give the Agent and the applicable Lenders notice of any request made under the MFIPPA for confidential information of the Agent or such Lenders and an opportunity to make representations on why the information should not be disclosed; and (ii) give serious consideration to the appropriate application of the exemptions established in the MFIPPA to protect such confidential information.

(c) Nothing in this Agreement shall limit, restrict or prohibit the CIB from publicly disclosing, following the signing of the Agreement, any of the following information: the description of the Project; the principal counterparty and/or counterparties; the description of the type and amount of the CIB’s financing product; the amount of investment attracted from private sector investors and institutional investors in the Project; and the Project’s intended environmental, social and economic outcomes.

ARTICLE 14 MISCELLANEOUS

14.1 Anti-Money Laundering Legislation

(a) The Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and “know your client” Applicable Law, whether within Canada or elsewhere (collectively, including any guidelines or orders thereunder, “**AML Legislation**”), the Lenders and the Agent may be required to obtain, verify and record information regarding the Borrower and, to the extent applicable, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of any of the foregoing Persons, and the Credit Facility contemplated hereby. The Borrower shall promptly

provide, or cause to be provided, all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or, subject to Section 12.1, any prospective assignee or participant of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence. The Borrower shall promptly notify, or cause to be notified, the Lenders and the Agent of any material changes to any of the information previously provided to the Lenders and the Agent in connection with their respective “know your client” obligations relating to this Agreement regarding the Borrower and, to the extent applicable, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of any of the foregoing.

- (b) If the Agent has ascertained the identity of the Borrower or any authorized signatories of the Borrower for the purposes of applicable AML Legislation, then the Agent:
- (i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a “written agreement” in such regard between each Lender and the Agent within the meaning of applicable AML Legislation; and
 - (ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the Borrower or any authorized signatories of the Borrower on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Borrower or any such authorized signatory in doing so.

14.2 Dispute Resolution Procedures

Except as otherwise specifically contemplated herein, as between the Borrower, on the one hand, and the Agent and the Lenders on the other, all disputes, controversies and claims arising out of or relating to any provision of this Agreement any other Credit Document, or the interpretation, enforceability, performance, breach, termination or validity of this Agreement or any other Credit Document, including the matters or procedures set forth in the Dispute Resolution Procedures, or any matter referred to for resolution pursuant to the Dispute Resolution Procedures (collectively and individually, a “**Dispute**”) will be resolved in accordance with, and the parties will comply with, the provisions of Schedule H (the “**Dispute Resolution Procedures**”).

14.3 Amendments and Waivers

(a) Subject to Sections 14.3(b) and 14.3(c), no acceptance, amendment or waiver of any provision of any of the Credit Documents, nor consent to any departure by the Borrower from such provisions, shall be effective unless in writing and approved by the Majority Lenders. Any acceptance, amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

(b) Only written acceptances, amendments, waivers or consents signed by all the Lenders shall:

- (i) reduce the rate or the principal or amount of, or interest on, directly or indirectly, any Advance Outstanding;
- (ii) change or postpone any date fixed for any payment of principal of, or interest on, or other amount of, any Advance Outstanding;
- (iii) change Section 4.2 or Section 4.4;
- (iv) change the definition of Majority Lenders; or
- (v) amend or waive Section 9.2 or this Section 14.3(b).

(c) Only written acceptances, amendments, waivers or consents signed by the Agent, in addition to the Majority Lenders, shall affect the rights or duties of the Agent under the Credit Documents.

(d) No amendment to any of the Credit Documents shall be binding on the Borrower unless consented to in writing by the Borrower.

14.4 Costs and Expenses

Each party shall pay its own costs and expenses in connection with the Credit Documents, including the preparation, negotiation, execution, and delivery and administration of this Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated). The Lenders shall pay the costs, expenses and fees of the Technical Advisor.

14.5 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as provided herein.

14.6 Time of Essence

Time shall be of the essence of this Agreement.

14.7 Governing Law and Submission to Jurisdiction

(a) This Agreement shall be interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable in that province.

(b) Each of the parties irrevocably and unconditionally (i) submits to the jurisdiction of the courts of the Province of Ontario over any action or proceeding arising out of or relating to this Agreement, (ii) waives any objection that it might otherwise be entitled to assert to the

jurisdiction of such courts and (iii) agrees not to assert that such courts are not a convenient forum for the determination of any such action or proceeding.

14.8 Severability

Whenever possible, each provision or portion of any provision of this Agreement will be interpreted in such manner as to be effective and valid under Applicable Law but the invalidity or unenforceability of any provision or portion of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision or portion of any provision, in any other jurisdiction. In addition, should a court determine that any provision or portion of any provision of this Agreement is not reasonable or valid, the parties agree that such provision should be interpreted and enforced to the maximum extent which the court deems reasonable or valid and the parties agree to request that the court apply notional severance to give effect to the restrictions in this Agreement to the fullest extent deemed reasonable or valid by the court.

14.9 Conflicts

In the event of a conflict or inconsistency between the application of any of the provisions of this Agreement and the application of any of the provisions of any of the other Credit Documents, the provisions giving the Lenders greater rights or remedies shall govern (to the maximum extent permitted by Applicable Law), it being understood that the purpose of this Agreement and any other Credit Document is to add to, and not detract from, the rights granted to the Lenders under the Credit Documents.

14.10 Counterparts

(a) This Agreement and any document contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts (including in electronic form and/or with electronic signatures), with the same effect as if all parties had executed and delivered the same Agreement or document, and all counterparts shall be construed together to be an original and will constitute one and the same Agreement or document. Subject to the conditions precedent specified in Article 5, this Agreement shall become effective when it has been executed by the CIB in its capacity as Agent and Lender and when the Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) The words “**execution**”, “**signed**”, “**signature**,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada) and other similar federal or provincial laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada or its *Uniform Electronic Evidence Act*, as the case may be.

14.11 English Language

The parties confirm that it is their wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. *Les parties aux présentes confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.*

14.12 Further Assurances

The Borrower shall, from time to time hereafter and upon any reasonable request of the Agent, promptly do, execute, deliver or cause to be done, executed and delivered, all further acts, documents and things as may be required or necessary in the reasonable opinion of the Agent for the purposes of giving effect to this Agreement and the other Credit Documents and to effectuate the transactions contemplated therein.

[The next page is the signature page.]

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first written above.

605 Rossland Road East
Whitby, Ontario
L1N 6A3
Attention: Commissioner of
Finance/Regional Treasurer
Email: budgets@durham.ca

**THE REGIONAL MUNICIPALITY OF
DURHAM**

by _____
Name: John Henry
Title: Regional Chair

Name: Alexander Harras
Title: Regional Clerk

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first written above.

150 King Street West, P.O. Box 15
Toronto, ON M5H 1J9
Attention: Head, Asset Management
Email: assetmanagement@cib-bic.ca

with a copy (which shall not constitute notice) to:

Attention: General Counsel &
Corporate Secretary
Email: CIBLegal@cib-bic.ca

150 King Street West, P.O. Box 15
Toronto, ON M5H 1J9
Attention: Head, Asset Management
Email: assetmanagement@cib-bic.ca

with a copy (which shall not constitute notice) to:

Attention: General Counsel &
Corporate Secretary
Email: CIBLegal@cib-bic.ca

Agent

CANADA INFRASTRUCTURE BANK

by _____

Name: Ehren Cory
Title: Chief Executive Officer

Lender

CANADA INFRASTRUCTURE BANK

by _____

Name: Ehren Cory
Title: Chief Executive Officer

SCHEDULE A INTERPRETATION

1. Defined Terms

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings specified below and grammatical variations of such terms shall have corresponding meanings:

“Actual Eligible ZEBs Electricity Costs” means, in respect of the ZEB Fleet for any period of time, the aggregate electricity costs for the ZEBs during such period of time. The Actual Eligible ZEBs Electricity Costs will be determined on a bus-by-bus basis, and will be calculated as a product of (A) x (B), where:

(A) is the actual number of kilowatt hours of electricity used to Operate the ZEB during such period of time (as determined using data sourced from the ZEB’s operating systems or, if the applicable charger or chargers are capable of providing such data on a ZEB-specific basis, then from such applicable charger or chargers); and

(B) is the Estimated Eligible ZEBs Electricity Costs per Kilowatt Hour for such period of time;

“Actual Eligible ZEBs Maintenance Costs” means, in respect of the ZEB Fleet for any period of time, the aggregate actual Eligible Maintenance Costs for the ZEBs during such period of time. Actual Eligible ZEBs Maintenance Costs may also include other maintenance costs if the Borrower demonstrates to the reasonable satisfaction of the CIB that the costs were incurred in accordance with the recommendations of the ZEBs Seller and with prudent industry practice. Actual Eligible ZEBs Maintenance Costs do not include (i) Eligible Maintenance Costs that were the subject of a warranty claim by the Borrower, to the extent that the Borrower’s claim was successful and resulted in the Borrower obtaining or receiving, at the warranty provider’s cost and expense, the necessary repairs, maintenance or replacement, or a refund, (ii) costs associated with repairing damage due to accidents or vandalism; or (iii) Eligible Maintenance Costs that were the subject of a warranty claim by the Borrower, to the extent that the Borrower’s claim was not successful as a result of the failure by the Borrower to manage, Operate or maintain the applicable ZEB in compliance with the terms and conditions of the applicable warranty;

“Actual Fuel Savings” means, in respect of the ZEB Fleet during any period of time, the amount (which may be positive or negative) equal to (A) – (B), where:

(A) is the Prorated GHG Bus Fuel Costs for such period of time, corresponding to the number and classes of the ZEBs in the ZEB Fleet that have commenced Operating at any time prior to the end of such period of time; and

(B) is the Actual Eligible ZEBs Electricity Costs for the ZEB Fleet during such period of time;

“Actual Maintenance Savings” means, in respect of the ZEB Fleet during any period of time, the amount (which may be positive or negative) equal to (A) – (B), where:

(A) is the Prorated GHG Bus Maintenance Costs for such period of time, adjusted for inflation, corresponding to the number and classes of the ZEBs in the ZEB Fleet that have commenced Operating at any time prior to the end of such period of time; and

(B) is the Actual Eligible ZEBs Maintenance Costs for the ZEB Fleet during such period of time;

“Actual Savings” means, in respect of the ZEB Fleet during any period of time, the sum (which may be positive or negative) of (A) + (B) + (C), where:

(A) is the Actual Fuel Savings for such period of time;

(B) is the Actual Maintenance Savings for such period of time; and

(C) is the amount, if any, paid by the Borrower pursuant to Section 7.1(d)(iv)(C) during such period of time;

provided, however, that if the Borrower fails to perform, observe or comply with the following reporting and disclosure obligations listed in Schedule F, then the Actual Savings for such period of time will be deemed to be equal to the Forecast Savings for such period of time: item 1(b), item 2(b) and item 2(e);

“Additional Purchase” has the meaning specified in the definition of Financial Close;

“Additional ZEBs” has the meaning specified in the definition of Financial Close;

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Agent;

“Advance” means an amount advanced to the Borrower by the CIB pursuant to this Agreement;

“Advances Outstanding” means, at any time, the aggregate of the amount of all Advances that are outstanding at such time;

“Advances Outstanding Per ZEB” means, in respect of a particular ZEB as of any date (the **“Reference Date”**), that portion of the Advances Outstanding that are attributable to such ZEB as of the Reference Date, the amount of portion which shall be equal to (A) – (B) + (C), where:

(A) is the Funded ZEB Acquisition Costs of such ZEB; (B) is the principal amount that would have been paid in respect of such ZEB up to and including the Reference Date if there had been no Savings Shortfall at any time up to and including the Reference Date; and

(C) is the Deferred Savings Amounts at such time divided by the number of ZEBs that currently comprise the ZEB Fleet;

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person;

“Agent” means the Canada Infrastructure Bank as administrative agent for the Lenders under this Agreement, and any successor appointed pursuant to Section 10.7;

“Agent’s Account” means the Agent’s Canadian Dollar account, the particulars of which shall have been notified to the Borrower by the Agent at least one Business Day prior to the first Payment Date under this Agreement;

“Aggregate Actual Savings” means, in respect of the ZEB Fleet at any time of determination, the aggregate Actual Savings during the period commencing on the Financial Close and ending at such time of determination; provided, however, that if more than one Financial Close occurs, the Actual Savings relating to the Additional ZEBs that are the subject of the Additional Purchase will not be included in the calculation of the Aggregate Actual Savings in respect of those ZEBs that were purchased by the Borrower using funds comprising any Advance in connection with any previous Financial Close until the next Payment Date (and thereafter) that follows the First Payment Date in respect of such Additional ZEBs. In connection with the Payment Commencement Date for the Additional ZEBs, only the Actual Savings relating to the Additional ZEBs will be included in the calculation of the Aggregate Actual Savings in respect thereof;

“Aggregate Forecast Savings” means, in respect of the ZEB Fleet at any time, the aggregate Forecast Savings during the period commencing on the Financial Close and ending at such time; provided, however, that if more than one Financial Close occurs, the Forecast Savings relating to the Additional ZEBs that are the subject of the Additional Purchase will not be included in the calculation of the Aggregate Forecast Savings in respect of those ZEBs that were purchased by the Borrower using funds comprising any Advance in connection with any previous Financial Close until the next Payment Date (and thereafter) that follows the First Payment Date in respect of such Additional ZEBs. In connection with the Payment Commencement Date for the Additional ZEBs, only the Forecast Savings relating to the Additional ZEBs will be included in the calculation of the Forecast Savings in respect thereof;

“AML Legislation” has the meaning specified in Section 14.1(a);

“Applicable Law” means, with respect to any Person, property, transaction or event, any present or future:

- (a) domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, convention, rule, regulation, restriction or by-law (zoning or otherwise);
- (b) judgment, order, writ, injunction, decision, direction, determination, ruling, decree or award;

- (c) regulatory policy, practice, ruling, interpretation, guideline or directive; or
- (d) Authorization,

in each case binding on or affecting the Person, Assets, transaction or event referred to in the context in which the term is used;

“Applicable Percentage” means the percentage of the total Advances Outstanding represented by each Lender’s Advances Outstanding;

“Assets” means, with respect to any Person, any property, assets and undertakings of such Person of every kind and wherever situated, whether now owned or hereafter acquired;

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Agent, in substantially the form of Schedule E or any other form approved by the Agent;

“Authorization” means, with respect to any Person, any order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, exemption, waiver, registration or other authorization of any Governmental Authority having jurisdiction over such Person or the property and assets of such Person;

“Availability Period” means the period commencing on the Closing Date and ending on March 31, 2027;

“Baseline Assumptions” means the Baseline GHG Bus Fuel Costs Per Litre, Baseline GHG Bus Efficiency, Baseline GHG Bus Maintenance Costs Per Kilometre, Estimated Eligible ZEBs Electricity Costs per Kilowatt Hour, Estimated ZEBs Efficiency and Estimated Eligible ZEBs Maintenance Costs specified on Schedule K. The Baseline Assumptions will be applied to each applicable Funding Supplement based on the expected deployment schedule of the ZEBs that are subject of the Funding Supplement;

“Baseline GHG Bus Costs” means, in respect of the ZEB Fleet for any period of time, the amount equal to (A) + (B), in each case adjusted for inflation, where:

(A) is the Baseline GHG Bus Fuel Costs for such period of time; and

(B) is the Baseline GHG Bus Maintenance Costs for such period of time;

“Baseline GHG Bus Efficiency” means, in respect of the ZEB Fleet for any period of time, the estimated fuel efficiency for GHG Buses during such period of time, which will reflect the weighted average of the Specified Distance for the various classes of ZEBs in the ZEB Fleet and will be expressed on a per litre per kilometre basis. The Baseline GHG Bus Efficiency will be specified in the applicable Funding Supplement;

“Baseline GHG Bus Fuel Costs” means, in respect of the ZEB Fleet for any period of time, the aggregate forecasted baseline fuel costs for GHG Buses during such period of time, calculated as the product of (A) x (B) x (C), where:

(A) is the Baseline GHG Bus Fuel Costs Per Litre for such period of time;

(B) is the Baseline GHG Bus Efficiency; and

(C) is the Specified Distance for such period of time;

“Baseline GHG Bus Fuel Costs Per Litre” means, in respect of the ZEB Fleet for any period of time, the forecasted baseline fuel costs for GHG Buses during such period of time, which will reflect the weighted average of the Specified Distance for the various classes of ZEBs in the ZEB Fleet and will be expressed on a per litre basis. The Baseline GHG Bus Fuel Costs Per Litre will be specified in the applicable Funding Supplement;

“Baseline GHG Bus Maintenance Costs” means, in respect of the ZEB Fleet for any period of time, the aggregate baseline Eligible Maintenance Costs for GHG Buses during such period of time, calculated as a product of (A) x (B), where:

(A) is the Baseline GHG Bus Maintenance Costs Per Kilometre for such period of time; and

(B) is the Specified Distance for such period of time;

“Baseline GHG Bus Maintenance Costs Per Kilometre” means, in respect of the ZEB Fleet for any period of time, the forecasted baseline Eligible Maintenance Costs for GHG Buses during such period of time, which will reflect the weighted average of the Specified Distance for the various classes of ZEBs in the ZEB Fleet and will be expressed on a per kilometre basis. The Baseline GHG Bus Maintenance Costs Per Kilometre will be specified in the applicable Funding Supplement;

“Borrower” means The Regional Municipality of Durham, and its successors and permitted assigns;

“Business Day” means any day of the year, other than a Saturday, Sunday or other day on which banks are required or authorized to close in Toronto, Ontario;

“CAAS Agreement” has the meaning specified in Section 6.1(j)(ii)(A);

“Canadian Dollars”, “Cdn. \$” and “\$” each means lawful money of Canada;

“Cancellation Payment” has the meaning specified in Section 4.2(c);

“Cancelled ZEBs” has the meaning specified in Section 4.2(c);

“Charging Infrastructure” means, in respect of the ZEB Fleet, the charging infrastructure that is required to Operate the ZEB Fleet;

“Charging Infrastructure Costs” means, in respect of the ZEB Fleet, the total direct cost (including goods and services or harmonized sales taxes) for the procurement and implementation of the Charging Infrastructure that is required to Operate the ZEB Fleet. For greater certainty, Charging Infrastructure Costs do not include the operating, maintenance and lifecycle costs for the Charging Infrastructure;

“Claim” means, with respect to any Person, any actual or prospective action, suit, order, charge, penalty, claim, litigation, investigation or proceeding of any kind or nature whatsoever against or otherwise involving such Person or the Assets of such Person;

“Closing Date” means the date hereof;

“Compliance Certificate” means a certificate of the Borrower, in the form attached hereto as Schedule D;

“Confidential Information” has the meaning specified in Section 13.1(b);

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise;

“Credit Commitment” means, at any time, in respect of the Credit Facility, \$62,000,000;

“Credit Documents” means this Agreement, all Funding Supplements and all other documents, instruments, certificates and agreements to be or hereafter from time to time executed and delivered to the Agent or the Lenders, or both, by the Borrower in connection with the Credit Facility;

“Credit Facility” means the non-revolving term credit facility made available to the Borrower in accordance with Section 2.1;

“Default” means any event or condition that constitutes an Event of Default or that could constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, the making of any determination, or any combination thereof;

“Deferred Savings Amounts” means, in respect of the ZEB Fleet at any time, the amount equal to (A) – (B), where:

(A) is the aggregate Savings Shortfall for the period commencing on the Financial Close and ending as of such time; and

(B) is the aggregate amount of all payments made by the Borrower to the Lenders as repayment of the Advances Outstanding that are attributable to the Savings Shortfall at any time prior to such time,

together with the interest accrued on such amount at the rate of one percent (1%) per annum, calculated daily and payable in arrears on each payment Date, for the period commencing on the applicable Payment Date on which the Savings Shortfall (or the relevant portion thereof) first arises and ending as of such time;

“Disposition” means, with respect to any ZEB, any direct or indirect sale, lease (where such Person is the lessor of such ZEB), assignment, transfer (including any transfer of title or possession), exchange for a different class of ZEB, conveyance or gift of such ZEB, and **“Dispose”** and **“Disposed”** have corresponding meanings;

“Disposition Amount” has the meaning specified in Section 4.2(a);

“Dispute” has the meaning specified in Section 14.2;

“Dispute Resolution Procedures” has the meaning specified in Section 14.2;

“Drawdown” means the drawdown of an Advance;

“Drawdown Date” means, in relation to any Advance, the date (which shall be a Business Day) on which a Drawdown of such Advance is made by the Borrower pursuant to a Drawdown Notice;

“Drawdown Notice” means a notice substantially in the form specified in Schedule B;

“Eligible Assignee” means any Person (other than a natural person, the Borrower or any Affiliate of the Borrower) that has been approved (such approval not to be unreasonably withheld or delayed) by the Agent and the Borrower, provided that the approval of the Borrower shall not be required in the case of any Person that is described in Schedule J;

“Eligible Maintenance Costs” means, in respect of any ZEB, the sum of the expenses described in Schedule I in respect of such ZEB;

“Eligible Purchase Price” means the following items and activities in respect of a bus purchase: the sale price charged by the manufacturer or seller, extended warranty coverage, transportation or delivery charges, and sales taxes applicable to all of the foregoing;

“Encumbrance” means any hypothec, mortgage, pledge, security interest, encumbrance, lien, charge, deposit arrangement, lease, assignment by way of security, adverse claim, right of set-off or agreement, trust, deemed trust or any other arrangement or condition that in substance or effect secures payment or performance of an obligation of the Borrower;

“Estimated Eligible ZEBs Costs” means, in respect of the ZEB Fleet for any period of time, the amount equal to (A) + (B), where:

(A) is the Estimated Eligible ZEBs Electricity Costs for such period of time; and

(B) is the Estimated Eligible ZEBs Maintenance Costs for such period of time;

“Estimated Eligible ZEBs Electricity Costs” means, in respect of the ZEB Fleet for any period of time, the aggregate estimated electricity costs for ZEBs during such period of time, calculated as a product of (A) x (B) x (C), where:

(A) is the Estimated Eligible ZEBs Electricity Costs Per Kilowatt Hour for such period of time;

(B) is the Estimated ZEBs Efficiency for such period of time; and

(C) is the Specified Distance for such period of time;

“Estimated Eligible ZEBs Electricity Costs Per Kilowatt Hour” means, in respect of the ZEB Fleet for any period of time, the estimated electricity costs for ZEBs during such period of time, which amount will reflect the weighted average of the Specified Distance for the various classes of ZEBs in the ZEB Fleet and will be expressed on a per kilowatt hour basis. The Estimated Eligible ZEBs Electricity Costs Per Kilowatt Hour will be specified in the applicable Funding Supplement;

“Estimated Eligible ZEBs Maintenance Costs” means, in respect of the ZEB Fleet for any period of time, the aggregate estimated Eligible Maintenance Costs for the ZEBs during such period of time, as specified in the applicable Funding Supplement;

“Estimated ZEBs Efficiency” means, in respect of the ZEB Fleet for any period of time, the estimated battery efficiency for ZEBs during such period of time, which will reflect the weighted average of the Specified Distance for the various classes of ZEBs in the ZEB Fleet and will be expressed on a kilowatt hour per kilometre basis. The Estimated ZEBs Efficiency will be specified in the applicable Funding Supplement;

“Event of Default” has the meaning specified in Section 8.1;

“Excusing Cause” means, with respect to the failure by the Borrower to Operate a ZEB during any Financial Year for the Specified Distance, the occurrence of any of the following events or circumstances:

- (a) the ZEB is included in an approved Remedial Plan and the Borrower used commercially reasonable efforts to comply with such Remedial Plan throughout such Financial Year;
- (b) the ZEB could not be Operated for more than five percent (5%) of the Specified Distance as a result of repairs to, or maintenance on, the ZEB, excluding routine, ordinary course or reasonably foreseeable maintenance;
- (c) the ZEB could not be Operated for more than five percent (5%) of the Specified Distance for any other reason beyond the reasonable control of the Borrower, but excluding any event, condition or circumstance (and the effect or consequence thereof) that arises out of or results from:

- (i) the inability of the Borrower to obtain financing or any other financial inability on the part of the Borrower;
- (ii) any changes in any expenses or costs of the Borrower or changes in the availability of any goods or services;
- (iii) any wilful misconduct, intentional breach of contract, dealing in bad faith or fraud by the Borrower;
- (iv) any failure of or non-performance by any contractor of the Borrower regardless of cause unless such failure or non-performance is due to an event or circumstance that would otherwise constitute an Excusing Cause;
- (v) any strike or other labour disruption involving persons employed by the Borrower who are responsible for the Operation or maintenance of the ZEBs or the Charging Infrastructure; and
- (vi) any change in Applicable Law;

“Extended Life ZEB” has the meaning specified in Section 2.4;

“Financial Close” means, in respect of any Advance, the date on which all of the conditions precedent in Article 5 have been satisfied or waived to the satisfaction of the Agent; provided, however, that in the case of each additional Funding Supplement that is agreed to by the CIB and the Borrower in connection with the purchase of additional ZEBs for the ZEB Fleet (each, an **“Additional Purchase”**, and the ZEBs that are purchased, the **“Additional ZEBs”**), the Advance by the CIB to the Borrower in connection with such Additional Purchase will constitute the Financial Close in respect of the Additional ZEBs;

“Financial Model” means the computer spreadsheet model, prepared by the CIB (with advice from the Technical Advisor) and the Borrower in respect of the ZEB Fleet (on a per bus basis and an aggregate basis), incorporating all Project Costs (including all ZEB Acquisition Costs), Funded ZEB Acquisition Costs, Baseline GHG Bus Costs (separately identifying Baseline GHG Bus Fuel Costs and Baseline GHG Bus Maintenance Costs), Estimated Eligible ZEBs Costs (separately identifying Estimated Eligible ZEBs Electricity Costs and Estimated Eligible ZEBs Maintenance Costs), the Forecast Savings and the aggregate Specified Reserve Deposit Amounts for the Term sufficient to meet the Borrower’s payment obligations pursuant to this Agreement, accompanied by details of all assumptions, calculations and methodology used in the compilation of the foregoing, in each case as updated or modified from time to time at each Financial Close and otherwise in accordance with this Agreement by the CIB (with advice from the Technical Advisor) and the Borrower;

“Financial Quarter” means, in respect of the Borrower, a period of three consecutive months in each Financial Year ending on **March 31**, June 30, September 30, and December 31 of such year;

“Financial Year” means, in respect of the Borrower, its financial year commencing on **January 1** of each calendar year and ending on December 31;

“First Payment Date” has the meaning specified in Section 4.1(c);

“Forecast Savings” means, in respect of the ZEB Fleet for any period of time, the amount equal to $[(A) - (B)] \times (C)$, where:

(A) is the Baseline GHG Bus Costs for a fleet of GHG Buses that is comparable in number and class to the ZEBs in the ZEB Fleet that are scheduled to be Operated during such period of time (or portion thereof);

(B) is the amount equal to the aggregate Estimated Eligible ZEBs Costs for the ZEBs in the ZEB Fleet that are scheduled to be Operated during such period of time (or portion thereof); and

(C) is the target amount of savings (expressed as a percentage) to be used by the Borrower to repay the Obligations.

The Forecast Savings will be agreed to by the Lender (with advice from the Technical Advisor) and the Borrower prior to the applicable Financial Close and will be specified in the applicable Funding Supplement. For greater certainty, the Forecast Savings will be calculated in a manner that contemplates the interest payment obligation under Section 3.3, assuming no Savings Shortfall on the applicable Payment Date;

“Funded ZEB Acquisition Costs” means, in respect of the ZEB Fleet, that portion of the ZEB Acquisition Costs that will be paid using funds that comprise one or more Advances, the maximum amount of which for any ZEB will be determined based on the Baseline Assumptions contained in the Funding Supplement that is applicable to such ZEB;

“Funding Supplement” means a supplement to this Agreement, substantially in the form attached hereto as Schedule C, pursuant to which the CIB agrees to lend to the Borrower a specified amount of funds to satisfy a portion of the ZEB Acquisition Costs (being the Funded ZEB Acquisition Costs) for one or more Additional ZEBs that the Borrower has acquired or intends to acquire (other than the ZEBs contemplated in any other Funding Supplement). Each Funding Supplement that is agreed to by the Borrower and the CIB will form part of this Agreement;

“GHG Bus” means a greenhouse gas emitting bus;

“Governmental Authority” means (a) the government, parliament or legislature of Canada or any other nation, or of any political subdivision thereof, whether provincial, territorial, state, municipal or local, (b) any agency, authority, instrumentality, ministry, tribunal, regulatory body, self-regulatory organization, commission, office, board, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, and (c) any other political or other subdivision, department or branch of any of the foregoing, including a

Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency;

“Insolvency Event” has the meaning specified in Section 8.2(b);

“Insurance Payment” has the meaning specified in Section 4.2(b);

“Lenders” means, collectively, the CIB and any assignee thereof upon such assignee executing and delivering an Assignment and Assumption to the Borrower and the Agent and, in the singular, any one of such Lenders;

“Lifecycle Reserve Account” has the meaning specified in Section 7.4(a);

“Lifecycle Reserve Account Funds” has the meaning specified in Section 7.4(a);

“Lifecycle Reserve Deposit Amount” has the meaning specified in Section 7.4(b);

“Lifecycle Reserve Deposit Deficiency” has the meaning specified in Section 7.4(b);

“Loan” means an extension of credit made to the Borrower pursuant to this Agreement consisting of an Advance, and **“Loans”** means the aggregate of all of the Advances;

“Majority Lenders” means, at any time, (i) if there are no Advances Outstanding, the CIB, and (ii) if there are Advances Outstanding, Lenders that have an interest in at least 51% of the Advances Outstanding at such time, as determined by the Agent;

“Material Adverse Effect” means any event, occurrence or condition that has or would reasonably be expected to have a material adverse effect on, or result in a material adverse change in:

- (a) the ability of the Borrower to perform its obligations under any of the Transaction Documents;
- (b) the validity or enforceability of any of the Credit Documents or the rights or remedies of the Agent and the Lenders thereunder; or
- (c) the validity or enforceability of any of the Project Documents to which the Borrower is a party or the rights or remedies of the Borrower thereunder; or
- (d) the ability of the Borrower to implement or Operate the ZEB Fleet, including the number and classes of ZEBs contemplated in any Funding Supplement; provided, however, that if a ZEB become a non-functioning asset notwithstanding that (i) the Borrower has complied with its maintenance covenants under Sections 7.1(d)(ii) and 7.1(d)(iii) in respect of such ZEB, and (ii) the Borrower has complied with its covenants in Section 7.1(f), then no Material Adverse Effect shall have occurred for purposes of this Agreement solely as a result thereof;

“Material Permits” means all Authorizations, the breach, non-performance or cancellation of which or failure of which to renew would reasonably be expected to have a Material Adverse Effect;

“Maturity Date” means, at any time, the date specified in the most recent Funding Supplement, as such date may be extended from time to time in accordance with Section 2.4;

“Net Borrower Savings” means, in respect of the ZEB Fleet at any time, the amount (which may be positive or negative) equal to (A) – (B), where:

(A) is the Aggregate Actual Savings as of such time; and

(B) is the sum of all payments made by the Borrower to the Lenders in respect of the Advances Outstanding as of such time, other than the Cancellation Payment;

“Net Proceeds” means any one or more of the following:

- (a) with respect to any Disposition of ZEBs by the Borrower, the aggregate amount received in cash (including any cash received by way of deferred payment pursuant to a note receivable, other non-cash consideration or otherwise) in connection with such Disposition, less the reasonable fees and out-of-pocket expenses (as evidenced by supporting documentation provided to the Agent upon request therefor by the Agent) actually paid by the Borrower in connection with such Disposition; and
- (b) with respect to the receipt of proceeds under any insurance policy by the Borrower, the aggregate amount received in cash in connection with such receipt of insurance proceeds less the reasonable fees, deductibles and other out-of-pocket expenses (as evidenced by supporting documentation provided to the Agent upon request therefor by the Agent) incurred or paid by the Borrower in connection with the claim under the insurance policy giving rise to such proceeds;

“Obligations” means, collectively, the Loans and all debts, liabilities and other obligations whatsoever of the Borrower to the Lenders under or in connection with this Agreement and any of the other Credit Documents, including each and every obligation of the Borrower to the Lenders now or hereafter existing under this Agreement to pay or repay the Advances Outstanding together with the interest accrued thereon calculated in accordance with Section 3.3, and all other payment, repayment, reimbursement and indemnification obligations hereunder and under the other Credit Documents;

“Operate” means, in the case of a ZEB, that the Borrower has taken possession of the ZEB, and the ZEB has begun to accumulate kilometres traveled, and **“Operating”** and **“Operation”** have corresponding meanings;

“Participant” has the meaning specified in Section 12.4;

“Payment Commencement Date” means, in respect of the ZEB Fleet that the Borrower acquires using funds comprising any Advance made pursuant to a particular Funding Supplement, the earlier to occur of:

- (a) the first anniversary of the date on which the Borrower first Operated any ZEB that it acquired using such funds; and
- (b) the second anniversary of the Financial Close for such Funding Supplement;

provided, however, that if more than one Financial Close occurs, there will be a separate Payment Commencement Date for each set of Additional ZEBs that are the subject of each Additional Purchase;

“Payment Date” means the last Business Day of March, June, September and December in each year. For certainty, for a Payment Date of March 31, the Quarterly Payment Period shall be the quarterly period ended on the prior December 31, for a Payment Date of June 30, the Quarterly Payment Period shall be the quarterly period ended on the prior March 31, for a Payment Date of September 30, the Quarterly Payment Period shall be the quarterly period ended on the prior June 30, and for a Payment Date of December 31, the Quarterly Payment Period shall be the quarterly period ended on the prior September 30.;

“Permitted Encumbrances” means, with respect to the Borrower:

- (a) Encumbrances for taxes, rates, assessments or other governmental charges or levies the payment of which is not yet due, or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by the Borrower and in respect of which reserves have been maintained in accordance with applicable accounting principles; and
- (b) other Encumbrances expressly consented to in writing by the Majority Lenders;

“Permitted Reserve Account Expenditures” means the costs and expenses associated with purchasing and installing two (2) replacement batteries in each ZEB that is included in the ZEB Fleet;

“Permitted Use” has the meaning specified in Section 2.3;

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity or association of any nature;

“Project” means the arrangements described in recital B to this Agreement relating to the purchase by the Borrower of approximately 98 ZEBs, which will comprise the ZEB Fleet for the purposes of this Agreement by the end of the Availability Period, and the procurement and implementation of the Charging Infrastructure that is required to Operate such ZEBs;

“Project Costs” means the total cost (including goods and services or harmonized sales taxes) of fully implementing the ZEB Fleet, including the Eligible Purchase Price for the

ZEBs and the Charging Infrastructure Costs, but excluding the operating, maintenance and lifecycle costs for such ZEBs and for the Charging Infrastructure;

“Project Documents” means, in respect of the ZEB Fleet from time to time, all material agreements to which the Borrower is or from time to time becomes a party which relate to the Project, including each ZEB Purchase Agreement and any other material agreement relating to the procurement, design-build, implementation, location, operation or maintenance of the ZEB Fleet or the Charging Infrastructure, including each CAAS Agreement, but excluding the Credit Documents;

“Prorated GHG Bus Fuel Costs” means, in respect of the ZEB Fleet for any period of time, the aggregate baseline fuel costs for GHG Buses during such period of time. The Prorated GHG Bus Fuel Costs will be determined on a bus-by-bus basis, reflecting the numbers and classes of GHG Buses that are comparable to the numbers and classes of ZEBs comprising the ZEB Fleet, and will be calculated as a product of (A) x (B) x (C), where:

(A) is the actual number of kilometres traveled by a ZEB of a comparable class during such period of time;

(B) is the Baseline GHG Bus Fuel Costs Per Litre for such period of time; and

(C) is the Baseline GHG Bus Efficiency for such period of time;

“Prorated GHG Bus Maintenance Costs” means, in respect of the ZEB Fleet for any period of time, the aggregate baseline Eligible Maintenance Costs for GHG Buses during such period of time. The Prorated GHG Bus Maintenance Costs will be determined on a bus-by-bus basis, reflecting the numbers and classes of GHG Buses that are comparable to the numbers and classes of ZEBs comprising the ZEB Fleet, and will be calculated as a product of (A) x (B), where:

(A) is the actual number of kilometres traveled by a ZEB of a comparable class during such period of time; and

(B) is the Baseline GHG Bus Maintenance Costs Per Kilometre for a GHG Bus for such period of time;

“Quarterly Payment Amount” has the meaning specified in Section 4.1(d);

“Quarterly Payment Period” has the meaning specified in Section 4.1(d);

“Register” has the meaning specified in Section 12.3;

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates;

“Remedial Plan” has the meaning specified in Section 7.1(i);

“Responsible Officer” means the chairman, a director, the president, any vice president, the chief executive officer, the chief operating officer, the chief financial officer or any other duly authorized signatory of the Borrower;

“Savings Shortfall” means, in respect of the ZEB Fleet during a specified period of time, the amount (if any) that the Actual Savings during such specified period of time are less than the Forecast Savings during the same period of time; provided, however, that if more than one Financial Close occurs, the Actual Savings and the Forecast Savings relating to the Additional ZEBs that are the subject of the Additional Purchase will not be included in the calculation of the Savings Shortfall until the next Payment Date (and thereafter) that follows the First Payment Date in respect of such Additional ZEBs;

“Specified Distance” means, with respect to a ZEB during any period of time, the number of kilometres specified in the applicable Funding Supplement for such ZEB for such period of time, and with respect to the ZEB Fleet during any period of time, the sum of the number of kilometres specified in the applicable Funding Supplement for each ZEB in the ZEB Fleet for such period of time;

“Specified Reserve Deposit Amount” has the meaning specified in Section 7.4(b)(i);

“Technical Advisor” means the technical advisor to the Agent and the Lenders, being Wood Environmental and Infrastructure Solutions, and any permitted successor thereto or replacement thereof selected by or otherwise satisfactory to the Lenders;

“Term” means the period commencing on the Closing Date and ending on the Maturity Date;

“Transaction Documents” means, collectively, the Credit Documents and the Project Documents;

“Transferring Lender” has the meaning specified in Section 12.2(a);

“ZEB” means a zero emission bus, including battery electric buses, hydrogen fuel cell electric buses and other electric buses;

“ZEB Acquisition Costs” means, in respect of the ZEB Fleet:

(a) in the case of a certain class of such ZEB, $(A) \times (B)$ (the **“ZEB Class Costs”**), where:

(A) is the total Eligible Purchase Price of that class of ZEB; and

(B) is the number of ZEBs in such class; and

(b) for all classes of ZEBs, the sum of the ZEB Class Costs;

“ZEB Fleet” means the ZEBs that from time to time are acquired by the Borrower using funds from one or more Advances;

“ZEB Purchase Agreement” means a purchase agreement that the Borrower, as purchaser, enters into with ZEBs Seller for that number and class of ZEBs that are intended to comprise the ZEB Fleet, as contemplated by a Funding Supplement; and

“ZEBs Seller” means an original equipment manufacturer (OEM) or vendor of ZEBs.

2. Rules of Construction

Except as may be otherwise specifically provided in this Agreement and unless the context otherwise requires, in this Agreement:

- (a) the terms **“Agreement”**, **“this Agreement”**, **“the Agreement”**, **“hereto”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement in its entirety and not to any particular provision hereof;
- (b) references to an “Article”, “Section”, “Schedule” or “Exhibit” followed by a number or letter refer to the specified Article or Section of or Schedule or Exhibit to this Agreement;
- (c) the division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular number shall include the plural and *vice versa* and words importing the use of any gender shall include all genders;
- (e) any reference to this Agreement or any other written agreement means this Agreement or such other agreement, as applicable, as amended, modified, replaced or supplemented from time to time;
- (f) any reference to a statute, regulation or rule shall be construed to be a reference thereto as the same may from time to time be amended, re-enacted or replaced, and any reference to a statute shall include any regulations or rules made thereunder;
- (g) all dollar amounts refer to Canadian Dollars; and
- (h) whenever any payment is required to be made, action is required to be taken or period of time is to expire on a day other than a Business Day, such payment shall be made, action shall be taken or period shall expire on the next following Business Day, and such extension of time shall be included in the computation of interest.

3. Certain Phrases, etc.

In any Credit Document, unless otherwise expressly provided:

- (a) the words “**including**” and “**includes**” mean “**including (or includes) without limitation**”;
- (b) the phrase “**the aggregate of**”, “**the total of**”, “**the sum of**”, or a phrase of similar meaning means “**the aggregate (or total or sum), without duplication, of**”;
- (c) the word “**will**” has the same meaning as the word “**shall**”;
- (d) any reference to any Person shall be construed to include such Person’s successors, permitted assigns and legal personal representatives; and
- (e) in the computation of periods of time from a specified date to a later specified date the word “**from**” means “**from and including**” and the words “**to**” and “**until**” each mean “**to (or until) but excluding**”.

4. References to the Agent and Lenders

Any reference in this Agreement to the Agent or any Lender shall be construed so as to include its successors and permitted transferees or assigns hereunder in accordance with its respective interests.

5. References to a Time of Day

Except as otherwise specified herein, a time of day shall be construed as a reference to the time of day in Toronto, Ontario.

6. Incorporation of Schedules

The Schedules attached to this Agreement will, for all purposes of this Agreement, form an integral part of this Agreement.

**SCHEDULE B
FORM OF DRAWDOWN NOTICE**

To: The Canada Infrastructure Bank

[Date]

The undersigned (the “**Borrower**”) refers to the credit agreement dated as of ■, 2023 (as amended, supplemented, replaced or restated from time to time, the “**Credit Agreement**”, the terms defined therein being used herein as therein defined) between, among others the Borrower and the Canada Infrastructure Bank (the “**CIB**”) and hereby gives you notice pursuant to Section 3.2(a) of the Credit Agreement that the undersigned hereby requests **[an Advance / Advances]** under the Credit Agreement and, in that connection sets forth below the information relating to such Advance[s]:

1. The requested date of the Advance[s], being a Business Day, is ■.
2. The requested aggregate principal amount of the Advance[s] is \$■.
3. The proceeds of the Advance will be used to purchase ■ ZEBs. **[Note: Indicate the number and class of ZEBs that are being purchased with proceeds of the Advance.]** The Funded ZEB Acquisition Costs for each ZEB are as follows: ■. **[Note: Specify the financed amount on a per ZEB basis. These amounts should be consistent with the financing amount in the Funding Supplement.]**
4. The aggregate amount of Project Costs (including all ZEB Acquisition Costs) incurred or to be incurred by the Borrower since Financial Close is \$■ and since the last Advance received by the Borrower is \$■.
5. The aggregate amount of funds that have been or will be received from sources other than the CIB and used for Project Costs (including all ZEB Acquisition Costs other than Funded ZEB Acquisition Costs) incurred or to be incurred by the Borrower since Financial Close is \$■ and since the last Advance received by the Borrower is \$■.
6. Attached hereto is a report that describes the current status of the Project. *[The CIB to provide form of report.]*

The undersigned hereby confirms and certifies to each Lender that:

- (a) funds are available to the Borrower to satisfy all Project Costs other than the Funded ZEB Acquisition Costs that have been or will be incurred within the Financial Quarter;
- (b) the proceeds of the proposed Advance will be used by the Borrower solely for a Permitted Use; and
- (c) on the date of this Drawdown Notice and the corresponding Drawdown Date:
 - (i) the representations and warranties given by the Borrower under the Credit Documents are true and correct on and as of each such date, as though made on and as of each such date, except for any

representation and warranty which is stated to be made as of a certain date;

- (ii) there is no pending or threatened judicial, administrative or other proceedings, investigations or litigation which seek to adjourn, delay, enjoin, prohibit or impose material limitations on any aspect of the transactions contemplated by the Transaction Documents;
- (iii) no event or condition has occurred and is continuing, can reasonably be expected to occur, or would result from such Advance or giving effect to this Drawdown Notice, which constitutes a Default or an Event of Default;
- (iv) such Advance, or otherwise giving effect to this Drawdown Notice, will not violate any Applicable Law in effect at that time; and
- (v) the Borrower has delivered to the Agent true, correct and complete copies of all Project Documents.

Yours truly,

**THE REGIONAL MUNICIPALITY OF
DURHAM**

by _____
Name:
Title:

Name:
Title:

SCHEDULE C
FORM OF FUNDING SUPPLEMENT

This Funding Supplement No. ■ dated as of the ____ day of _____, 202■ between the Canada Infrastructure Bank (the “CIB”) and The Regional Municipality of Durham (the “Borrower”) is entered into in accordance with that certain Credit Agreement dated as of ■, 202■ (the “Credit Agreement”) between, among others, the CIB and the Borrower. Capitalized terms that are used but not defined herein have the respective meanings specified in the Credit Agreement.

1. The CIB and the Borrower agree as follows:
 - (a) This Funding Supplement is subject to, and governed by, the terms of the Credit Agreement.
 - (b) The financial terms of this Funding Supplement are listed in Exhibit A attached hereto.
 - (c) [Notwithstanding any previous Funding Supplement,] the Maturity Date under the Credit Agreement is ■.
 - (d) This Funding Supplement cannot be amended without the written consent of the CIB and the Borrower.
2. The Borrower represents and warrants to the CIB that all of the information and certifications provided in the Drawdown Notice dated ■ remain true, accurate and complete as of the date hereof.

Accepted and agreed as of the date first written above:

CANADA INFRASTRUCTURE BANK

by _____
Name:
Title:

**THE REGIONAL MUNICIPALITY OF
DURHAM**

by _____
Name:
Title:

Name:
Title:

**Exhibit A to Funding Supplement No. ■
Financial Terms**

Credit Commitment	
Drawdown Dates	
Availability Period	
Payment Commencement Date	
Class 1	
Description	
Number Purchased	
Financing Per Bus	
Class 2	
Description	
Number Purchased	
Financing Per Bus	
Bus	Class
Bus 1	
Bus 2	
Bus 3	
<i>Provide the following information on a quarterly basis</i>	
Reporting Period Start	
Reporting Period End	
Payment Date	
Specified Distance	
Bus 1	km
Bus 2	km
Bus 3	km
Buses from prior years	km
Fleet	km

Warranty Term (if applicable)	
Bus 1	
Bus 2	
Bus 3	
Baseline GHG Bus Fuel Costs Per Litre	\$/L
Baseline GHG Bus Maintenance Cost Per Kilometre	\$/km
Estimated Eligible ZEBs Electricity Costs per Kilowatt Hour	\$/kWh
Estimated ZEBs Efficiency	kWh/km
Estimated Eligible ZEBs Maintenance Costs	\$
Forecast Savings	\$

Note: Also include the Specified Reserve Deposit Amount for each ZEB and the amount, if any, to be deposited in the Lifecycle Reserve Account by the Borrower on each Payment Date in connection therewith.

**SCHEDULE D
FORM OF COMPLIANCE CERTIFICATE**

To: The Canada Infrastructure Bank, as Agent [Date]

The undersigned (the "**Borrower**") refers to the credit agreement dated as of ■, 2023 (as amended, supplemented, replaced or restated from time to time, the "**Credit Agreement**", the terms defined therein being used herein as therein defined) among the Borrower, the Canada Infrastructure Bank, as Agent, and the Canada Infrastructure Bank and the other lenders party thereto. This Compliance Certificate is delivered for the Financial **[Quarter/Year]** ending on **[■]** (the "**Period**").

The Borrower hereby certifies that:

1. The financial statements most recently delivered present fairly the financial position, results of operations and changes in financial position of the Borrower for the Period and as at the last day of such Period, as the case may be, in accordance with applicable accounting principles.
2. The representations and warranties contained in Section 6.1 of the Credit Agreement are true and correct as though made on the date hereof, except for any such representation and warranty which is stated to be made as of a certain date.
3. As of the date hereof, the Borrower is not in breach of any of the covenants contained in Article 7 of the Credit Agreement, and no Default or Event of Default has occurred and is continuing as at the date hereof.

DATED this ■ day of ■, 20■

**THE REGIONAL MUNICIPALITY OF
DURHAM**

by _____
Name:
Title:

Name:
Title:

**SCHEDULE E
ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between [**insert name of Assignor**] (the “**Assignor**”) and [**insert name of Assignee**] (the “**Assignee**”). Capitalized terms used but not defined herein shall have the respective meanings specified in the Credit Agreement identified below (the “**Agreement**”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex I attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Agent as contemplated below (a) all of the Assignor’s rights and obligations in its capacity as a Lender under the Agreement, the other Credit Documents and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all such outstanding rights and obligations of the Assignor under the respective facilities identified below and (b) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Agreement, the other Credit Documents, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above (the rights and obligations sold and assigned pursuant to clauses (a) and (b) above being referred to herein collectively as, the “**Assigned Interest**”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____
3. Borrower: _____
4. Agent: _____
As the administrative agent under the Credit Agreement
5. Agreement: Means the credit agreement dated as of March 31, 2023 among The Regional Municipality of Durham (the “**Borrower**”), the Canada Infrastructure Bank, as Agent and the Canada Infrastructure Bank and the other lenders from time to time party thereto, as heretofore or hereafter amended, supplemented or restated from time to time.
6. Assigned Interest:

Aggregate Amount of Advances	Amount of Advances Assigned	Percentage Assigned of Advances

_____, _____ [the “Effective Date”] [TO BE INSERTED BY AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDING OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

by _____
 Name:
 Title:

ASSIGNEE
[NAME OF ASSIGNEE]

by _____
 Name:
 Title:

Consented to and Accepted

CANADA INFRASTRUCTURE BANK,
as Agent
 by _____
 Name:
 Title:

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

1 Representations and Warranties

- 1.1 **Assignor.** The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Agreement or any other Credit Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Credit Documents, (iii) the financial condition of the Borrower or any other Person obligated in respect of any Credit Document or (iv) the performance or observance by the Borrower of any of its obligations under any Credit Document.
- 1.2 **Assignee.** The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Agreement, (ii) it meets all requirements of an Eligible Assignee under the Agreement (subject to receipt of such consents as may be required under the Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Documents as a Lender thereunder and (iv) it has received a copy of the Agreement, together with copies of the most recent financial statements delivered by the Borrower pursuant thereto, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Agent or any other Lender and (b) agrees that (i) it will, independently and without reliance on the Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Credit Documents are required to be performed by it as a Lender.
- 1.3 **Payments.** From and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.
- 1.4 **General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed

counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law governing the Agreement.

**SCHEDULE F
ADDITIONAL REPORTING AND DISCLOSURE OBLIGATIONS**

Report or Information	When to be Provided
1. Financial Reporting	
(a) Annual audited financial statements of the Borrower, prepared in accordance with applicable accounting principles, including a balance sheet, statement of income and retained earnings and a statement of changes in financial position for such Financial Year (which financial statements shall be audited by a nationally recognized accounting firm acceptable to the Majority Lenders), setting forth in each case in comparative form the figures for the previous Financial Year, including the notes thereto and any management discussion and analysis to the extent available	Within 180 days after the end of each Financial Year of the Borrower
(b) A calculation and report of the Aggregate Actual Savings, Actual Savings, Aggregate Forecast Savings, Forecast Savings, Deferred Savings Amounts, Net Borrower Savings and Lifecycle Reserve Account Funds, together with a variance report setting forth in comparative form the figures for the corresponding period contained in the Financial Model, in each case certified by the chief financial officer, principal accounting officer, treasurer or controller of the Borrower, in such person's capacity as an officer or authorized signatory of the Borrower and not in his or her personal capacity,	Within 60 days after the end of each Financial Quarter of the Borrower
2. Other Information	
(a) A Compliance Certificate in respect of the applicable period	Concurrently with the deliverables in items 1(a) and 1(b)
(b) A report on the progress and status of the Project, including the implementation and Operation of each ZEB and the Charging Infrastructure	Within 90 days after the end of each of the first three Financial Quarters of the Borrower and within 120 days after the end of each Financial Year of the Borrower
(c) Information reasonably requested by the Agent in relation to the assets, liabilities, financial condition, affairs, operation or prospects of (A) the Borrower or (B) the Project	As soon as reasonably practicable after request by the Agent
(d) If requested by the Agent, a certificate signed by a Responsible Officer of the Borrower, in such person's capacity as an officer of the Borrower and not in his or	Promptly, and in any event with two (2) Business Days, after request by the Agent

Report or Information	When to be Provided
her personal capacity, which states whether a Default or Event of Default has occurred and continues unremedied	
(e) If the Borrower is required to provide a Remedial Plan, then it shall provide a report on the status of its implementation of and compliance with that Remedial Plan	Within 45 days after the end of each Financial Quarter of the Borrower while any Remedial Plan is in place
(f) Notice and details of any material changes to any of the information previously provided to the Lenders and the Agent in connection with their respective “know your client” obligations relating to this Agreement regarding the Borrower and its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of any of the foregoing	Promptly, and in any event with two (2) Business Days, upon the Borrower becoming aware of the event
3. Project Documents	
(a) A copy of each ZEB Purchase Agreement	As soon as practicable following the execution thereof
4. Notice of Certain Events	
Notice of the occurrence of the following (and, where applicable, any actions taken or proposed in respect of the event):	
(a) Incorrect Representation or Warranty: If any representation or warranty made by the Borrower in or in connection with a Credit Document is misleading in any material respect or incorrect	Promptly, and in any event within two (2) Business Days, upon the Borrower becoming aware of the event
(b) Default, Etc.: A Default or Event of Default under the Credit Documents	Promptly, and in any event within two (2) Business Days, upon the Borrower becoming aware of the event
(c) Litigation: Any claim, litigation, arbitration, dispute or administrative proceeding being made, instituted, pending or threatened against the Borrower which, if determined adversely, could reasonably be expected to have a Material Adverse Effect	Promptly, and in any event within two (2) Business Days, upon the Borrower becoming aware of the event
(d) Authorizations: Any complaint, action or written threat of action under any Applicable Law or in respect of any Material Permit, which action could reasonably be expected to have a Material Adverse Effect	Promptly, and in any event within two (2) Business Days, upon the Borrower becoming aware of the event
(e) Breaches: The breach of, or any failure for whatever reason by the Borrower to perform, observe or comply with any obligation imposed by any Transaction Document, Authorization, Material Permit or insurance	Promptly, and in any event within two (2) Business Days, upon the Borrower becoming aware of the event

Report or Information	When to be Provided
policy, if such breach or failure to perform could reasonably be expected to have a Material Adverse Effect, including particulars of the breaches or failure to perform and the remedial action (if any) proposed to be taken in respect of it	
(f) Disputes: Any pending or threatened dispute in relation to the Project or under a Credit Document or a Project Document (including any ZEB Purchase Agreement) if any particular outcome of the dispute could reasonably be expected to have a Material Adverse Effect, including particulars of the dispute and the action (if any) proposed to be taken by the Borrower in respect of it	Promptly, and in any event within two (2) Business Days, upon the Borrower becoming aware of the event
(g) Financial Model: If the Borrower becomes aware of any fact, event or circumstance the inclusion or omission of which would reasonably be expected to make the Financial Model inaccurate or misleading in any material respect	Promptly, and in any event within two (2) Business Days, upon the Borrower becoming aware of the event
(h) Disposition of ZEB: Subject to Section 7.1(m), if the Borrower proposes to Dispose of any ZEB	In accordance with Section 7.1(m)(ii)

SCHEDULE G COMMUNICATIONS PROTOCOL

Objectives:

The main objective of this document is for the CIB and the Borrower to gain alignment on the overall public communications approach to the Project.

This document addresses communications at financial close, significant Project milestones and ongoing communications-related activities.

The goal of project communications is to effectively articulate the value and benefits of a project, the investment and innovation resulting from the CIB's participation. We want to showcase the partnership and project information in a transparent manner to Canadians to demonstrate benefits and results.

Principles:

- The Borrower and the CIB will each identify a lead contact for communications matters to provide leadership and coordination on communications, consistent with these principles.
- All Project-related communications activities that could implicate the Borrower and/or the CIB will be done collaboratively and with advanced information sharing and consent of the other party.
- The Borrower and the CIB will cooperate and coordinate on Project media relations that could implicate the Borrower and/or the CIB, including proactive media engagement, stakeholder relations and issues management.
- Information necessary to enable communications will be shared in a timely manner among the Borrower and the CIB. This includes proactively sharing news releases or other materials in advance for respective approvals by the parties.
- Professional quality (high resolution) photos and videos, infographics, vehicle decals and other communications materials for the Project will be required, and the Borrower and the CIB will agree in advance on the most effective process to develop those materials. The Borrower will play a leadership role on producing these materials given its responsibilities for project execution.
- The CIB will be provided reasonable access to the ZEBs, from time to time for special events, gathering of photo and video footage or other required communications material, government and media tours with advanced collaboration and agreement of the Borrower.
- The parties will discuss and agree in advance the responsibility for any third party costs related to these communications activities.

The Borrower and the CIB may develop a more detailed communications protocol to confirm the operational approach to communications between all parties in line with this document.

SCHEDULE H DISPUTE RESOLUTION PROCEDURES

1. General

(a) For purposes of this Schedule, a reference to “parties” means the Borrower and the Agent (on its own behalf and on behalf of the Lenders). The parties agree that at all times during the Term, each of them will make bona fide efforts to:

- (i) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
- (ii) resolve all Disputes at the lowest level of management.

(b) If the parties are unable to resolve a Dispute at the lowest level of management within ten (10) Business Days following the commencement of bona fide efforts to resolve the Dispute, then at any time after the expiry of such period of time any party may deliver to the other parties a notice of dispute (a “**Notice of Dispute**”), which Notice of Dispute will, subject to the terms of this Schedule requiring resolution of a Dispute pursuant to a specific dispute resolution procedure set forth in this Schedule, initiate the dispute resolution procedure described in Sections 2 to 5 (inclusive) of this Schedule. To be effective, the Notice of Dispute must state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the party issuing the Notice of Dispute and be signed by an authorized representative of the party.

2. Amicable Resolution by Senior Management

(a) Following receipt of a Notice of Dispute by either party, representatives of senior management of each party will promptly and diligently make reasonable bona fide efforts to resolve the Dispute.

(b) Each party’s representatives will provide to the other parties’ representatives, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information, documents and submissions (other than legally privileged information and other than information the parties reasonably may redact to protect trade secrets and confidential commercial, financial, scientific and technical information the disclosure of which could reasonably be expected to prejudice the economic interests or competitive position of the party or, in the case of the CIB, could reasonably be expected to be injurious to the financial interests of the Government of Canada or the ability of the Government of Canada to manage the economy of Canada) as reasonably may be required or as reasonably requested by the other parties to facilitate the resolution of the Dispute; provided, however, that, unless the disclosing party otherwise consents in writing, any such disclosed facts, information, documents and submissions may be received only by the members of the senior management and the senior officers of the receiving parties and the receiving parties’ professional advisors, and must be used by them solely for the purpose of the resolution of the Dispute in respect of which such facts, information, documents and submissions were disclosed.

3. Resolution by Non-Binding Mediation

(a) If, following the process referred to in Section 2 of this Schedule (or as otherwise agreed to in writing by the parties pursuant to Section 6(b) of this Schedule), a Dispute is not

resolved by representatives of senior management within ten (10) Business Days after the referral of such Dispute to them, or within such longer period of time as such representatives may unanimously agree in writing, then at any time after the expiry of such period of time the parties will attempt to resolve such Dispute by non-binding and without prejudice mediation pursuant to this Section 3; provided, however, that, notwithstanding the foregoing, if any party gives notice to the other parties at any time prior to the joint appointment of a mediator pursuant to Section 3(b) of this Schedule that such party does not wish to attempt the resolution of such Dispute by such non-binding mediation, then such Dispute will instead be resolved by Expert Determination pursuant to Section 4 of this Schedule or by litigation pursuant to Section 5 of this Schedule, as applicable.

(b) Any mediation pursuant to this Schedule will be conducted by a single mediator appointed jointly by the parties as soon as possible and in any event within five (5) Business Days after the date on which the parties agree in writing to attempt to resolve the Dispute by mediation (or within such longer period of time as the parties may agree in writing). If the parties cannot agree, then the CIB shall be entitled to appoint the mediator, provided that a mediator appointed by the CIB may not be someone who was at any time during the twelve (12)-month period prior to such proposed appointment in any way interested, financially or otherwise, in any project that was financed in whole in part by the CIB or otherwise under contract by the CIB for any purpose.

(c) All mediators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as mediators.

(d) The parties agree that the mediator will have the authority to implement the process for mediation, subject to the terms of this Agreement. The parties agree that the role of the mediator is to facilitate without prejudice discussions between the parties in order to resolve the Dispute.

(e) Any facts, information, documents and submissions disclosed by one party to the others in the course of the mediation may be received only by the senior management and the senior officers of the receiving parties and the receiving parties' professional advisors, and must be used by them solely for the purpose of the resolution of the Dispute in respect of which such facts, information, documents and submissions were disclosed.

(f) The place of mediation will be Toronto, Ontario. The language of the mediation will be English unless otherwise agreed to in writing by the parties.

(g) Each party will bear its own costs related to the mediation. The costs and disbursements of the mediator will be borne equally by the parties.

(h) The mediation will not be binding on the parties. Under no circumstances will the mediator have the authority or jurisdiction to make orders or directions that bind the parties or affect the parties' respective rights and obligations under any of the Credit Documents.

(i) The parties agree to proceed with the mediation expeditiously given the nature of the Dispute.

(j) This Agreement constitutes an agreement to undertake non-binding mediation that will be specifically enforceable.

(k) Any mediator appointed pursuant to this Section 3 will keep all information about the Dispute confidential and will not disclose such information to anyone other than the parties.

4. **Expert Determination – Remedial Plans**

(a) If the parties fail to resolve any Dispute relating to any Remedial Plan through the process referred to in Sections 1, 2 or 3 of this Schedule, all such Disputes (each, an “**Expert Dispute**”) will be referred to a qualified and experienced expert (the “**Expert**”) for his or her investigation and determination (the “**Expert Determination**”).

(b) Any Expert Dispute will be resolved by a single Expert appointed by the CIB with the consent of the Borrower, which consent shall not be unreasonably withheld or delayed (with advice from the Technical Advisor), provided that no one will be appointed to act as an Expert who is or was at any time during the five (5)-year period prior to such proposed appointment in any way interested, financially or otherwise, in the Technical Advisor or in any project that was financed in whole in part by the CIB or otherwise under contract by the CIB or the Technical Advisor for any purpose. Unless otherwise agreed by the parties, the Expert will be an individual who has knowledge and expertise relating to the operation and maintenance of ZEBs.

(c) The Expert will consider such information as the Expert, acting reasonably, deems necessary to make the Expert Determination other than legally privileged information and information the parties reasonably may redact to protect trade secrets and confidential commercial, financial, scientific and technical information. The parties will provide the Expert with such information as the Expert, acting reasonably, deems necessary to make the Expert Determination (other than legally privileged information and other than information the parties reasonably may redact to protect trade secrets and confidential commercial, financial, scientific and technical information the disclosure of which could reasonably be expected to prejudice the economic interests or competitive position of the party or, in the case of the CIB, could reasonably be expected to be injurious to the financial interests of the Government of Canada or the ability of the Government of Canada to manage the economy of Canada).

(d) The Expert will:

- (i) provide the parties with a reasonable opportunity to make written representations in a reasonable form to be determined by the Expert, in relation to matters relevant to the Dispute, which written representations will be provided by each party to the Expert and the other parties;
- (ii) allow the parties to rely on business records, expert advice and reports and any information provided to the Expert in accordance with Section 4(c) of this Schedule; and
- (iii) not require viva voce evidence or sworn affidavits from the parties as part of the process in Section 4 of this Schedule, unless the Expert determines that it is reasonably necessary to have viva voce evidence or sworn affidavits.

(e) The Expert will render the Expert Determination as soon as possible and, in any event, will use all reasonable efforts to render the Expert Determination no later than ten (10) Business Days after the date of the receipt by the Expert from the parties of the information requested by it, or such longer period of time as agreed to in writing by the parties.

(f) The Expert will provide to the parties a brief written reasons for the Expert Determination.

(g) The Expert will keep all information related to the Expert Determination confidential and will not disclose that information to anyone other than the parties.

(h) Each party will bear its own costs related to the Expert Determination. The costs and disbursements of the Expert will be borne equally by the parties.

(i) The Expert Determination will be final and binding on both parties and not subject to appeal, judicial review, litigation or any other dispute resolution procedure, and the parties expressly waive all rights of review or appeal in connection with the Expert Determination.

5. **Resolution of Disputes by the Courts**

If the parties fail to resolve any Dispute, other than an Expert Dispute, through the process referred to in Sections 2 or 3 of this Schedule, then any party who has complied with Sections 2 and 3 of this Schedule, as relevant, may seek to resolve such Dispute through litigation in a court of competent jurisdiction.

6. **Miscellaneous**

(a) Nothing contained in this Schedule will prevent the parties from seeking interim protection from the courts of the Province of Ontario, including seeking specific performance or injunction, if necessary to prevent irreparable harm to a party.

(b) The parties may, by written agreement, on a Dispute by Dispute basis:

(i) extend or abridge any or all timelines set out in this Schedule; and

(ii) agree to waive or by-pass any one or more of the Dispute resolution procedures specified in this Schedule and, instead, proceed directly to resolution of the Dispute by litigation pursuant to this Schedule.

**SCHEDULE I
ELIGIBLE MAINTENANCE COSTS**

S. No	Major Category	Diagnose/ Campaign/Repair /Replace/Inspection/Service Item*
1	Brake system	Rotors, pads, calipers, drums, brake chambers, lines, hoses, fittings, valves, reservoirs, hoses and lines
2	Tires and Rims	Tires, rims, studs, nuts
3	Seats	Driver's seat, repair passenger seats as required
4	Batteries 12/24V / Charging	Converters, electronic controllers, switches, batteries, onboard charger, regulators, equalizers, cables, connections
5	Steering	Tie rods, drag links, kingpins, hubs, steering box, pump, mitre box, steering column
6	Suspension	Shocks, spring kits, bellows, leveling and control valves, kneeling
7	Fluids	Coolant, power steering fluid, traction motor gear oil, greases, general lubricants
8	HVAC	Applicable parts and consumables, annual maintenance, testing.
9	Body/Frame	Applicable exterior panels and body components, frame inspection, repair, and undercoating (if applicable), window glazing, seals and frames., bumpers, mirrors.
10	Aux. heater	Liquid fuelled heater components, electric heater components
11	Air systems	Compressor, dryer, purge valves, tanks, lines
12	Interior	Seats, floor, lights, heaters, stanchions, panels, accessories, compartments and access doors
13	Cooling system	Hoses, fittings, cores, pumps, chillers, fans, controls
14	PM/Safety inspection	Time/distance-based maintenance, bi-annual & annual safety inspections
15	Electrical	Applicable electrical components, wiring, gauges, networked devices, data loggers
16	Entrance / Exit Door(s)	Door motors, linkages and pivots, controllers, sensors, door panels, seals and glazing
17	Fire suppression	Main controller, cylinders, leak detection and sensors, wiring, plumbing, controls
18	Propulsion	Traction motor, transmission, axle and components, driveshaft, gearbox (if equipped), wheel motors, bearings
19	Misc. Components	Windshield wiper/washer, radiator/surge tank cap, glass/mirrors, lighting system, information systems, ECM module, security camera, farebox, entrance ramps, ramp controls and hydraulic systems, defrosting assembly, LED

		lights, radio equipment, sensors, wiring, gauges, warning devices, plumbing, instrument cluster
20	Energy Storage System	Battery pack replacement(s) as required, control modules, wiring, cables, cooling plates, sensors
21	Misc. Directly applied labour	Road calls, Change offs, Interior and Exterior cleaning.
22	Articulated Bus systems	Articulation joint, structure, hydraulics, controls, additional axles, additional doors.

Notes:

* The *Diagnose/Campaign/Repair Repair/Replace/ Inspection/Service Items* is not an exhaustive list, but rather is a major component listing.

SCHEDULE J
CERTAIN ELIGIBLE ASSIGNEES AND PERMITTED PARTICIPANTS

1. Any of the banks listed in Schedule I, II or III of the *Bank Act* (Canada) that (i) is not controlled, directly or indirectly, by any foreign government or governmental authority and (ii) has assets of not less than \$50 billion.
2. Any insurance company, pension fund, trust company, credit union or other financial institution regulated under the laws of Canada or any province thereof, provided that such entity is an eligible lender to the Borrower pursuant to Regulation 276/02 and Regulation 653/05 under the *Municipal Act, 2001* and any other applicable Acts and regulations.
3. Any fund (i) the purpose of which is to invest (equity or debt) in infrastructure-related companies, sectors, projects or undertakings, and (ii) that is managed in Canada, provided that such entity is an eligible lender to the Borrower pursuant to Regulation 276/02 and Regulation 653/05 under the *Municipal Act, 2001* and any other applicable Acts and regulations.

**SCHEDULE K
BASELINE ASSUMPTIONS**

PART A – RISK ALLOCATION

Table 1 – Risk Allocation Matrix

Variable		Units	Assumption	Risk Ownership ¹
(1) General Assumptions				
a.	Useful life of bus	Years	12	CIB
b.	Average mileage	Km/Yr	55,000	Borrower

(2) ZEB Batteries²				
a.	Timing of battery replacement	Year	NA	Borrower
b.	ZEB battery size	kW	40ft: 524 60ft: 660	Borrower
c.	Replacement cost per kWh	2023\$/kW	NA	Borrower
d.	Battery deflation assumption	%/year	-5%	Borrower
e.	Annual battery degradation	%/year	1%	Borrower

(3) ZEB Costs				
a.	Maintenance 40 ft. (preventative & corrective)	\$/km	40ft: Table 2 60ft: Table 3	CIB
b.	Fuel Efficiency 40 ft.	kWh/km	40ft: Table 2 60ft: Table 3	CIB

(4) GHG Costs				
a.	Maintenance (preventative & corrective)	\$/km	40ft: Table 2 60ft: Table 3	NA
b.	Engine/transmission refurbishment	2023\$	NA	NA
c.	Fuel Efficiency Average	L/km	40ft: Table 2 60ft: Table 3	NA

a.	Price per year	<i>\$/kWh</i>	Table 4	Borrower
a.	Price per year	<i>\$/L</i>	Table 5	NA

1	Where CIB is identified as risk owner, CIB is sharing the risk that the forecasts for these variables are incorrect
	Where the Borrower is identified as risk owner, the Borrower is retaining the risk that the forecasts for these variables are incorrect.
	Where risk owner is identified as NA, the variable relates to the diesel baseline.
2	The Borrower is purchasing a battery warranty up front with the purchase of ZEBs. As a result, battery replacement does not apply

PART B – TECHNICAL BASELINE & FORECASTING

Table 2 – 40' Bus Baseline

40ft Buses	Units	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	12-yr
		1	2	3	4	5	6	7	8	9	10	11	12	Avg
Baseline Bus Maintenance Costs per Kilometre	\$/km	0.58	0.64	0.70	0.77	0.84	0.92	1.02	1.11	1.22	1.34	1.48	1.62	1.02
Estimated Eligible ZEBs Maintenance Costs	\$/km	0.53	0.56	0.58	0.60	0.63	0.65	0.68	0.70	0.73	0.76	0.79	0.82	0.67
Baseline GHG Bus Efficiency	L/km	0.49	0.48	0.50	0.48	0.48	0.48	0.48	0.48	0.48	0.48	0.49	0.51	0.49
Estimated ZEBs Efficiency	kWh/km	1.52	1.55	1.58	1.60	1.63	1.66	1.69	1.55	1.58	1.61	1.64	1.67	1.61

Table 3 – 60' Bus Baseline

60ft Buses	Units	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	12-yr
		1	2	3	4	5	6	7	8	9	10	11	12	Avg
Baseline Bus Maintenance Costs per Kilometre	\$/km	0.99	1.06	1.13	1.20	1.28	1.37	1.46	1.56	1.66	1.77	1.89	2.01	1.45
Estimated Eligible ZEBs Maintenance Costs	\$/km	0.76	0.79	0.82	0.85	0.89	0.92	0.96	1.00	1.04	1.08	1.12	1.17	0.95
Baseline GHG Bus Efficiency	L/km	0.71	0.69	0.72	0.70	0.70	0.69	0.69	0.69	0.69	0.69	0.71	0.74	0.70
Estimated ZEBs Efficiency	kWh/km	2.54	2.58	2.63	2.67	2.72	2.77	2.82	2.59	2.64	2.68	2.73	2.78	2.68

Table 4 – Electricity Pricing Forecast

Electricity Price Forecast	Units	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038
Electricity Costs per Kilowatt Hour	\$/kWh	0.13	0.13	0.14	0.14	0.14	0.15	0.15	0.15	0.16	0.16	0.16	0.17	0.17	0.17	0.18	0.18

Table 5 – Diesel Pricing Forecast

Diesel Pricing Forecast	Units	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038
Baseline GHG Bus Fuel Costs per Litre	\$/L	1.66	1.66	1.72	1.79	1.85	1.91	1.98	2.05	2.08	2.11	2.14	2.17	2.19	2.22	2.26	2.29

**SCHEDULE "C-1" TO BY-LAW NUMBER 20-2023
OF
THE REGIONAL MUNICIPALITY OF DURHAM**

Year	Interest Rate %	March 31st		June 30th		September 30th		December 31st		Total Annual Payment \$	Principal Balance Outstanding December 31st
		Interest \$	Principal \$	Interest \$	Principal \$	Interest \$	Principal \$	Interest \$	Principal \$		
2025	1.00							158,146	495,350	653,496	12,170,168
2026	1.00	30,009	138,850	29,996	147,358	29,954	146,513	29,585	146,437	698,702	11,591,010
2027	1.00	28,581	167,560	28,480	175,568	28,351	174,796	27,910	174,784	806,030	10,898,302
2028	1.00	27,122	179,656	26,650	188,057	26,470	187,319	25,999	187,331	848,604	10,155,939
2029	1.00	25,042	200,277	24,821	209,851	24,565	209,173	24,038	209,233	927,000	9,327,405
2030	1.00	22,999	224,244	22,696	234,203	22,355	233,593	21,766	233,706	1,015,562	8,401,659
2031	1.00	20,716	253,576	20,314	259,441	19,884	258,903	19,231	259,071	1,111,136	7,370,668
2032	1.00	18,343	286,851	17,613	293,518	17,069	293,173	16,332	293,465	1,236,364	6,203,661
2033	1.00	15,297	318,196	14,673	325,299	14,015	325,053	13,195	325,419	1,351,147	4,909,694
2034	1.00	12,106	353,621	11,359	361,473	10,573	361,338	9,662	361,788	1,481,920	3,471,474
2035	1.00	8,560	397,784	7,663	405,377	6,726	405,377	5,704	405,930	1,643,121	1,857,006
2036	1.00	4,621	456,447	3,482	466,471	2,348	466,687	1,175	467,401	1,868,632	-
		213,396	2,977,062	207,747	3,066,616	202,310	3,061,925	352,743	3,559,915	13,641,714	